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## Appendices

Appendix 1: Compact Agreement/Memorandum of Understanding

Appendix 2: Final Rule for the HIHWNMS

Appendix 3: Environmental Assessment

Appendix 4: Response to Comments

Appendix 5: Bibliography

Appendix 6: Hawaiian Glossary

Appendix 7: Acronyms



## **Appendix 1: Compact Agreement for the Coordinated Management of the Hawaiian Islands Humpback Whale National Marine Sanctuary**

This Intergovernmental Compact Agreement (hereinafter "Compact") is made between the State of Hawai'i and the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce (hereinafter collectively referred to as "Parties") for the purpose of clarifying the relative jurisdiction, authority, and conditions of the NOAA-State partnership for managing the Sanctuary. It clarifies the State's continuing authority and jurisdiction over its State waters, submerged lands, and other resources within the Sanctuary. The Compact further establishes provisions with respect to NOAA's collaboration with the State of Hawai'i on Sanctuary management issues.

### **I. RECITALS**

Whereas, Hawai'i is an Ocean State with over 750 miles of coastline, estuaries, harbors, and embayments adjoining an 829,122 square-mile Exclusive Economic Zone;

Whereas, the marine environment of the Hawaiian Archipelago supports abundant and biologically diverse aquatic communities with extensive conservation, recreational, commercial, ecological, historical, research, educational, economic, and aesthetic values paramount to the Nation, the State, and the people of Hawai'i;

Whereas, the waters of the Hawaiian Islands provide essential habitat for breeding, calving, and nursing activities of the endangered North Pacific Humpback Whale;

Whereas, the humpback whales' habitat in Hawaiian waters is dependent upon a healthy marine environment;

Whereas, the economy of the State is also dependent upon a healthy marine environment and the quality of its marine resources to support its commercial and recreational fisheries and water-related visitor industry;

Whereas, the State has taken steps to protect unique marine communities found in its waters to include the establishment of Marine Life Conservation Districts, Natural Area Reserves, Fishery Management Areas, and Subsistence Fishing Zones;

Whereas, Congress, by passage of the Hawaiian Islands National Marine Sanctuary Act in Hawaiian waters, Subtitle C, Title III of Public Law 102-587 (Act), designated the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) in Hawaiian waters;

Whereas, the Act required that NOAA develop a comprehensive management plan with implementing regulations, in concert with the State, local, and other Federal interests, and a means for integrating existing authorities to govern the management of the Sanctuary.

Whereas, the Sanctuary covers approximately 1,420 square miles of Federal and State waters within the Main Hawaiian Islands.

## Appendix 1: Compact Agreement/MOU

Whereas, the primary purposes of the Sanctuary's Designation Document, implementing regulations, and management plan are to: (1) protect humpback whales and their habitat in Hawaiian waters; (2) educate and interpret for the public the relationship of species to their wintering habitat in the Hawaiian Islands; (3) coordinate the management of uses of the Sanctuary's resources consistent with the Act and other existing State and Federal laws, including all public and private uses, uses customarily and historically practiced by indigenous Hawaiians for subsistence, cultural, and religious purposes; (4) identify research needs and establish a long-term monitoring program with respect to the whales and their habitat; (5) ensure coordination and cooperation between Sanctuary managers and other relevant State, Federal, and local authorities; and (6) sensitize users of the Sanctuary's resources and the general public to the needs for protecting marine ecosystems and the principles of sustainable use;

Whereas, the Act was amended in 1996 to, inter alia provide that the Secretary of Commerce shall not institute any user fee under the Act for any activity within the Sanctuary or any use of the Sanctuary or its resources;

Whereas, the Sanctuary's management plan sets forth a process for cooperative Federal-State management and protection of the humpback whale and its habitat;

Whereas, this Compact will form the foundation for subsequent interagency and intergovernmental cooperative agreements and other less formal interagency and institutional work efforts.

## II. DEFINITIONS

**Civil Action**—means actions arising under the National Marine Sanctuaries Act or under authorities supporting state claims within the Sanctuary, including civil penalties recovered under section 307, and amounts recovered under section 312.

**Emergency Regulations**—means any temporary regulation, including prohibitions necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource.

**Governor**—means the Governor of the State of Hawai'i, or designee.

**Management Plan**—means the final management plan and regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary.

**NOAA**—means the National Oceanic and Atmospheric Administration.

**Regulations**—means the final Sanctuary regulations implementing the Management Plan.

**Sanctuary**—means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

**Sanctuary Resource**—means any humpback whale, or the humpback whale's habitat within the Sanctuary, defined as those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

**State**—means the State of Hawai'i.





### III. AUTHORITIES

Under the Hawaiian Islands National Marine Sanctuary Act, as amended (subtitle C, title II, P.L. 102-587, Nov. 4, 1992) and the National Marine Sanctuaries Act, as amended (16 U.S.C. § 1431 et seq.; also known as title III of the Marine Protection, Research, and Sanctuaries Act), the Secretary of Commerce, through NOAA, has been vested with the jurisdiction and authority to protect and manage the resources of this Sanctuary in trust for the People of the United States and is specifically charged with implementation of the policy of the United States.

The executive power of the State of Hawai'i is vested in the Governor under Section 1, Article V of the State Constitution and other applicable provisions of law. The Governor is entrusted by the People of Hawai'i to hold in trust the land and water resources of the State, including submerged lands, the uses of which benefit the public. In recognition of these obligations to uphold the Public Trust and acting as the State's chief steward for the environment, the Governor enters into this Intergovernmental Compact Agreement.

### IV. NOW, THEREFORE, BE IT RESOLVED BY THE UNDERSIGNED THAT:

A. The Parties recognize the Federal-State cooperative arrangement for management of the Sanctuary and its resources and that no Federal, State, or local title or authority to manage and regulate submerged lands, resources, or activities has been limited, conveyed or relinquished through this Compact.

B. The Governor of Hawai'i has not conveyed title to nor relinquished authority over any State-owned submerged lands and waters or other State-owned resources by agreeing to include State-owned resources within the Sanctuary boundary.

C. The Sanctuary Management Plan will apply throughout the Sanctuary, including the portion of the Sanctuary within the seaward boundary of the State.

D. NOAA and the State will collaborate in the management of the Sanctuary and its resources consistent with the Act, NMSA, Sanctuary Management Plan, and Memoranda of Agreements and Protocols developed thereunder, including but not limited to the following:

1. Memorandum of Understanding between NOAA and the State Department of Health and State Department of Land and Natural Resources, establishing mutually agreeable procedures and mechanisms for coordinating the review of State permits for activities that might impact humpback whales or their habitat; and

2. Cooperative Enforcement Agreement, to be negotiated, establishing procedures and mechanisms for coordinating State and Federal enforcement activities within the Sanctuary. To the extent permitted by law, there shall be mutual agreement regarding enforcement policies and priorities.

E. No State or local funding is required to implement the Sanctuary Management Plan, its implementing regulation, or any of the provisions of the Compact.





F. Any proposed change to the Sanctuary Management Plan shall be reviewed in consultation with the State. Where such change includes any new Sanctuary regulation or substantive amendment (as opposed to editorial or technical changes), it shall not take effect in State waters without first obtaining the approval of the Governor.

G. The imposition, extension, or renewal of Federal Sanctuary emergency regulations in State waters shall not be authorized without the Governor's approval.

H. The Governor reserves the right to propose changes to the Sanctuary Management Plan and, if necessary, NOAA shall initiate the Federal rule promulgation process required to make revisions requested by the Governor to the regulations implementing the management plan.

I. Civil penalties recovered under Section 307 of the National Marine Sanctuaries Act shall be used by NOAA consistent with the requirements and priorities of the Sanctuary Management Plan. Amounts recovered under section 307 with respect to incidents within areas subject to State jurisdiction shall be used in consultation and agreement with the State consistent with the Plan. Similarly, to the maximum extent consistent with section 312(d) of the referenced Federal statute, any monetary recovery that may result from any civil action shall be used for the exclusive benefit of the Sanctuary.

J. The Sanctuary's Management Plan, Designation Document and its implementing regulations do not list commercial or recreational fishing as activities subject to regulation. No Sanctuary fishing regulation in the Hawaiian Islands Humpback Whale National Marine Sanctuary shall take effect in State waters until established by the Board of Land and Natural Resources.

K. Section 304(e) of the National Marine Sanctuaries Act requires the Secretary of Commerce to review the Sanctuary's Management Plan and implementing regulations every five years to evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of site-specific management techniques, and revise the management plan as necessary to fulfill the purposes and policies of the Act. When the Management Plan and implementing regulations for the Sanctuary are reevaluated, the Secretary of Commerce will repropose the management plan and regulations in their entirety and the State of Hawai'i will have the opportunity to review the Management Plan and regulations, in their entirety, and indicate if any or all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in State waters.

L. The Governor shall designate a State employee as his representative to work in consultation with the Sanctuary manager as an equal partner in the oversight of Sanctuary operations. The State of Hawai'i and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the State and NOAA shall be decided by the managing partners consistent with State and Federal laws.

M. The goals and objectives of the Sanctuary management plan were developed to complement and coordinate existing management efforts, and, in part, to address some of the objectives and policies contained in NOAA Fisheries' Final Recovery Plan (Recovery Plan) for the Humpback Whale. Throughout the implementation of the management plan, therefore, Sanctuaries & Reserves Division in coordination with the State, will consult with NOAA Fisheries to evaluate the effective-





ness of existing management efforts in achieving those objectives and policies, including whether additional measures (e.g., regulations or critical habitat) to protect the humpback whale and its habitat are needed. Prior to making a final decision on whether to designate critical habitat for humpback whales in Hawai'i State waters under the Endangered Species Act, NOAA will fully involve and consult with the State.

N. The boundaries of the Sanctuary within State waters shall encompass approximately 1,420 square miles of Federal and State waters from the highwater mark seaward to the 100-fathom depth contour around portions of Kaua'i, O'ahu, Moloka'i, Lāna'i, Maui, Hawai'i, the Pailolo Channel, and the area known as Penguin Bank.

O. The designation of the Sanctuary does not limit or restrict in any way State or Federal government actions to respond to oil or hazardous material spills. The Sanctuary will work within established procedures of the Oceania Regional Response Team for oil or hazardous material spill response and planning.

#### V. SPENDING AUTHORITY

The Secretary, may apply Federal Sanctuary funds to support any activity in the State regardless of location with respect to the Sanctuary's boundary, provided that such activity is consistent with the terms of the designation and Sanctuary Management Plan.

#### VI. RESERVATION OF RIGHTS

The Parties each retain full authority and reserve all rights to take whatever actions deemed necessary to pursue, preserve, and protect any legal right, interest, or remedy. Nothing in this Compact is intended nor shall be construed to waive or foreclose any such authority, right, interest, or remedy.

#### VII. MODIFICATION PROVISIONS

It is the expressed intent of the Parties to revise and make additions to this Compact to reflect the continuing development of the cooperative relationship of the Parties in the protection and management of Sanctuary resources through the implementation of the Sanctuary Management Plan. Any modifications, revisions, or amendments to this Compact shall be in writing and executed by the Parties and shall be incorporated into the Compact and become effective only upon the signature of the Parties.

#### VIII. PERIOD

This Compact will be effective on the date of the last signature of the approving official of either of the Parties and shall continue in force unless and until terminated in conjunction with the five-year review of the Sanctuary Management Plan.

#### IX. SAVINGS CLAUSE

A. Nothing herein is intended to conflict with current State or Federal laws, policies, regulations, or directives. If any of the terms of this Compact are inconsistent with existing Federal



## Appendix 1: Compact Agreement/MOU

or State laws, policies, regulations, or directives, then those portions of this Compact which are determined to be inconsistent shall be invalid. The remaining terms of this Compact not affected by the inconsistency shall remain in full force and effect.

B. At the first opportunity for review of the Compact, all necessary changes will be accomplished by either an amendment to this Compact or by entering into a new Compact or other agreement.

C. Should disagreement arise on the interpretation or implementation of the provisions of this Compact or amendments and/or revisions thereto that cannot be resolved at the program operations level, the matter shall be forwarded to higher authority for resolution.

D. All requirements of this Compact are subject to the availability of the funds of the parties.

### X. SIGNATURES

D. James Baker  
Under Secretary for Oceans and Atmosphere  
National Oceanic and Atmospheric Administration  
Dated: 2/12/98

Benjamin Cayetano  
Governor  
State of Hawai'i  
Dated: 5/4/98





Draft  
Memorandum of Understanding  
Between the  
National Oceanic and Atmospheric Administration  
National Ocean Service  
National Marine Sanctuary Program  
and the  
State of Hawai'i  
Department of Land and Natural Resources

This Memorandum of Understanding (MOU) is between the National Marine Sanctuary Program (NMSP), National Ocean Service, National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the Department of Land and Natural Resources (DLNR) of the State of Hawai'i (hereafter jointly referred to as "the Parties").

## **I. Purpose**

This MOU establishes procedures and protocols for the coordinated management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) between the NMSP and DLNR. Both entities share the commitment to protect the endangered humpback whale (*Megaptera novaeangliae*) and its habitat as specified in the Sanctuary Management Plan and the Compact Agreement for the Coordinated Management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Compact Agreement).

Section IV.L. of the Compact Agreement states that "the State of Hawai'i and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary." The Compact Agreement also states that the Governor's representative will "work in consultation with the Sanctuary manager as an equal partner in the oversight of Sanctuary operations."

The main purpose of this MOU is to specify the various means by which the Compact Agreement and Sanctuary Management Plan will be implemented at the level of program operations and interactions between NMSP and DLNR personnel.

## **II. References and Authorities**

NMSP administers the Sanctuary pursuant to 16 U.S.C. 1431 et seq., and enters into this agreement pursuant to 16 U.S.C. 1442 (a).

Chapter 171, Section 3 of the Hawai'i Revised Statutes authorizes the DLNR to manage, administer, and exercise control over Hawai'i's aquatic resources and ocean waters.

The Governor of Hawai'i has designated DLNR as the lead State agency for coordinated management of the Sanctuary, and has appointed the Sanctuary co-manager of DLNR as the Governor's representative referred to in Section IV.L of the Compact agreement.

Section 195D-5, Chapter 195D of the Hawai'i Revised Statutes authorizes DLNR to enter into MOU's with agencies of the Federal government for administration and management of any area established for the protection of indigenous aquatic life.





## Appendix 1: Compact Agreement/MOU

Section E of the Sanctuary Management Plan states that “SRD [now the National Marine Sanctuary Program, NMSP] will develop a cooperative partnership with the State of Hawai‘i and NOAA Fisheries to implement components of this Final Management Plan. SRD will coordinate its on-site activities through cooperative agreements and/or specific MOUs.”



### III. General Considerations

The Parties recognize the following considerations underlying this MOU:

- Both Parties have public trust responsibility and statutory authority to protect humpback whales and their habitat in Hawaiian waters.
- Both Parties wish to maximize, and benefit from, each other’s strengths, and eliminate duplication of effort to ensure the wisest use and expenditure of public resources.
- Both Parties are accountable to stakeholders and communities who have a right to expect timeliness, efficiency, professionalism, and progress toward achieving the goals of the Sanctuary.
- Both Parties wish to elicit and incorporate private and civic sector input, expressed locally and nationally, into Sanctuary priority-setting, planning and ongoing management.
- Both Parties wish to continuously improve the products and services they provide.
- Both Parties require flexibility, as allowed by law and best management practices, in developing and implementing Sanctuary management activities and related marine resources management activities to meet local needs and expectations regarding the Sanctuary.
- NMSP retains its authority and responsibility to ensure consistent and effective implementation of national laws and policies related to the Sanctuary.

### IV. Shared Responsibilities of the Parties

#### a. Resource Protection

The parties will form a working partnership to achieve a higher level of protection for the humpback whales and their habitat than can be achieved by either of the parties working alone.

Both Parties will:

1. Participate cooperatively in the development and implementation of any management program or plan to achieve the purposes of the Sanctuary.
2. Notify the other Party immediately of emergencies and provide an opportunity to participate in any response.
3. Participate in the protection role of each party as identified by the management plan, as revised.

#### b. Communication and Coordination

To facilitate the cooperative partnership and shared oversight stipulated in the Compact Agreement, the Parties agree to promote effective communication and coordination between their respective agencies. To this end, the Parties agree to adhere to the following set of mutual expectations or provisions regarding Sanctuary operations and staff interactions.

Both Parties will be given an opportunity to:

1. Review and comment on all public documents, press releases, educational and other



outreach materials produced by either Party in all cases where the theme of the document, press release, educational and other material is directly related to the Sanctuary.

2. Review and comment on agenda, programs and other plans for any public meeting or event produced and/or sponsored by either Party, within a reasonable period of time, prior to the meeting or event in all cases where the theme of the meeting or event is directly related to the Sanctuary.
3. Participate cooperatively in national and local meetings hosted by either Party where the Sanctuary is the primary topic of the meeting.
4. Freely meet with any other agency when developing party-specific positions on Sanctuary-related issues.
5. Ensure that all communication with the public, e.g., public presentations, documents for public use, and communications with media, will acknowledge the cooperative management arrangement described herein and in the Compact Agreement. In general, this acknowledgment will entail a brief description of the cooperative management arrangement, and of the respective responsibilities and authorities of each party. In the case of written materials, this acknowledgment may be expressed via the following statement, "NOAA and the State of Hawai'i, a partnership for protection." While the logos of both Parties will be prominently displayed on all Sanctuary documents, each party retains the right to exclude the use of its logo should it deem necessary.

#### c. Research and Monitoring

Both Parties will be given an opportunity to:

1. Review and comment on all proposed scientific research activities supported by either Party in all cases where the research is directly related to the Sanctuary.
2. Participate in the research role of each party to be identified by the management plan, as revised.

#### d. Education and Outreach

Both Parties will be given an opportunity to:

1. Review and comment on all proposed education and outreach activities supported by either Party in all cases where the research is directly related to the Sanctuary.
2. Participate in the education role of each party to be identified by the management plan, as revised.

#### e. Operations

Both Parties will be given an opportunity to:

1. Be advised of and comment on any Sanctuary personnel management changes proposed by either Party prior to finalization of the change. Sanctuary personnel changes include hiring, dismissal, and changes in general duties or responsibilities of any paid State or Federal

## Appendix 1: Compact Agreement/MOU

employee or contractor whose primary duties are directly related to the Sanctuary. Both parties recognize and understand the final hiring authority for State and Federal positions lies with DLNR and NOAA respectively.

2. Be advised of and comment on annual Sanctuary budget allocations development and subsequent annual operating plan changes.
3. Meet to develop annual operating plans, modifications to such plans, and long term planning sessions and to identify the roles and responsibilities of each Party in implementing such plans, activities and operations.
4. Participate in performance evaluation as defined by the management plan, as revised.
5. Participate in the operational role of each party to be identified by the revised management plan.

### d. Performance Evaluation

The Parties agree to jointly develop a process by which each Party's performance in adhering to the provisions of this MOU is fairly and accurately evaluated on a regular basis.

### e. Points-of-Contact

The NMSP Sanctuary Manager and DLNR co-manager are the principal points-of-contact (see addresses below) for official communications between NMSP and DLNR respectively, regarding the Sanctuary. Copies of all written communications regarding the Sanctuary that are sent from NMSP to any State agency shall be furnished in a timely manner to the Sanctuary co-manager. Copies of all written communications regarding the Sanctuary that are sent from DLNR to any Federal agency shall be furnished in a timely manner to the Sanctuary manager.

NMSP: Naomi Mcintosh  
6700 Kalaniana'ole Highway  
#104  
Honolulu, HI 96825  
(808) 397-2651  
(808) 397-2650 fax  
Naomi.mcintosh@noaa.gov

DLNR: Jeffrey Walters, Ph.D.  
1151 Punchbowl Street  
#330  
Honolulu, HI 96813  
(808) 587-0106  
(808) 587-0115 fax  
jeffrey\_s\_walters@exec.state.hi.us

## V. Period

This MOU will become effective on the date of the last signature of the approving official of either of the Parties and shall continue in force unless terminated (1) by mutual written consent by the Parties; (2) 90 days written notice by either Party, or (3) in conjunction with any review of the Sanctuary Management Plan.

## VI. Modification

It is the expressed intent of the Parties to revise and make additions to this MOU to reflect continuing development of the cooperative relationship of the Parties in managing the Sanctuary. Any modifications, revisions, or amendments to this MOU shall be in writing and executed by the Parties and shall be incorporated into the MOU and become effective only upon signature of the Parties.





## VII. Savings Clause

Nothing herein is intended to conflict with current State or Federal laws, policies, regulations, or directives. If any of the terms of this MOU are inconsistent with existing State or Federal laws, policies, regulations, or directives, then those portions of this MOU, which are determined to be inconsistent, shall be invalid. The remaining terms of this MOU not affected by the inconsistency shall remain in full force and effect.

At the first opportunity for review of this MOU, all necessary changes will be accomplished by either an amendment to this MOU, or by entering into a new MOU or other agreement.

Should disagreement arise on the interpretation or implementations of the provisions of this MOU or amendments and/or revisions thereto that cannot be resolved at the program operations level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for resolution.

All requirements of this MOU are subject to the availability of the funds of the Parties.

## VIII. Sanctuary Management Plan

This MOU or any amended or revised version thereof shall be incorporated as part of any revised version of the Sanctuary Management Plan.

## IX. Signatures

\_\_\_\_\_  
 Daniel J. Basta                      Date  
 Director  
 National Marine Sanctuary Program  
 Department of Commerce

\_\_\_\_\_  
 Gilbert Coloma-Agaran                      Date  
 Director  
 Department of Land and Natural Resources  
 State of Hawai'i



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## Appendix 2: Final Rule for the Hawaiian Islands Humpback Whale National Marine Sanctuary

06566 Federal Register / Vol. 64, No. 228 / Monday, November 29, 1999 / Rules and Regulations

Alaskan VOR Federal airways are published in paragraph 6010(b) of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Alaskan VOR Federal airways listed in this document will be published subsequently in the Order.

### The Rule

This action amends part 71 by establishing three VOR Federal airways, V-603, V-617, and V-621 located in the State of Alaska.

Prior to this action there were a number of uncharted nonregulatory routes that used the same routings as these VOR Federal airways. Those nonregulatory routings were used daily by air carrier and general aviation aircraft. The FAA is taking this action to establish these three VOR Federal airways for the following reasons: (1) The conversion of these uncharted nonregulatory routes to VOR Federal airways will add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; (2) pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) this amendment will establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) addition of these routes will improve the management of air traffic operations and thereby enhance safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9585, 3 CFR, 1959–1963 Comp., p.349.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(b)—Alaskan VOR Federal Airways

\* \* \* \* \*

V-603 [New]

From Elsie, AK, NDB, 20 AGL, to Dillingham, AK.

\* \* \* \* \*

V-617 [New]

From Homer, AK, to Johnstone Point, AK.

\* \* \* \* \*

V-621 [New]

From Barrow, AK, VOR, to Atkasuk, AK, NDB.

\* \* \* \* \*

Issued in Washington, DC, on November 22, 1999.

**Reginald C. Matthews,**

Manager, Airspace and Rules Division.

[FR Doc. 99-30889 Filed 11-26-99; 8:45 am]

BILLING CODE 4910-11-P

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 990914255-9255-01]

RIN 0648-AN28

#### Hawaiian Islands Humpback Whale National Marine Sanctuary

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule; effective date and modifications.

**SUMMARY:** Pursuant to the Hawaiian Islands National Marine Sanctuary Act and the National Marine Sanctuaries

Act, NOAA developed the comprehensive final management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or the Sanctuary). NOAA issued final regulations on March 28, 1997, to implement that plan and govern the conduct of activities within the Sanctuary. Congress and the Governor of the State of Hawaii (Governor) had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review those regulations and management plan. After the forty-five day review period, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State.

During the forty-five day review period the Governor submitted to the Secretary of Commerce a certification that implementation of the management plan and certain regulations were unacceptable unless specific amendments were made to the regulations. In response to the Governor's certification, NOAA amended those regulations certified as unacceptable to incorporate the Governor's changes. Consequently, upon their effective date the regulations, as modified by this rule, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

This rule amends the regulations published in the March 28, 1997, **Federal Register**, in response to the Governor's certification, and announces the effective date of the regulations.

**EFFECTIVE DATE:** The final rule published on March 28, 1997, at 62 FR 14799 as amended by the revision of 15 CFR part 922, subpart Q in this document is effective December 29, 1999.

**ADDRESSES:** The Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared to implement the Sanctuary designation was released on February 18, 1997. Copies of the FEIS/MP, and the March 28, 1997, **Federal Register** document are available on request to the Hawaiian Islands Humpback Whale National Marine Sanctuary Office, 726 South Kihai Road, Kihel, Maui, Hawaii, 96753; or the Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West







Highway, SSMC-4, 11th Floor, Silver Spring, Maryland, 20910.

**FOR FURTHER INFORMATION CONTACT:**

Allen Tom, Sanctuary Manager, Kihel, Maui, Hawaii, (808) 879-2818 (Maui), (808) 541-2184 (Oahu) or (800) 831-4888 (inter-island toll-free).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The HIIWNMS was designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA; Title II, Subtitle C, Pub. L. No. 102-587) which was signed into law on November 4, 1992. The HINMSA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 *et seq.* The NMSA authorizes the designation of national marine sanctuaries and the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10-15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 06-50 (Sept. 21, 1993, as amended).

**II. Forty-five Day Review Period Under the National Marine Sanctuaries Act and Hawaiian Islands National Marine Sanctuary Act**

NOAA published final regulations on March 28, 1997, (62 FR 14799) to implement the HIIWNMS management plan and govern the conduct of activities within the HIIWNMS. Under the NMSA and HINMSA, Congress and the Governor had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., management plan and regulations). After forty-five days, the regulations would become final and take effect, except that any term or terms the Governor certified within the forty-five day period to the Secretary of

Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State. The following discusses the Governor's actions during the forty-five day period and corresponding modifications to the final regulations made by NOAA in response to those actions.

**Certification by the Governor of Hawaii**

On June 5, 1997, during the forty-five day review period under the NMSA and HINMSA, the Governor of the State of Hawaii certified by letter to the Secretary of Commerce that implementation of the management plan and certain regulations were unacceptable in State waters. However, the management plan and regulations certified as unacceptable would be acceptable if NOAA amended the regulations and the intergovernmental Compact Agreement (Compact), developed by the State and NOAA, as requested in the Governor's certification letter. NOAA has amended the regulations and the Compact to incorporate the modifications requested by the Governor in his letter. By doing so, the regulations and management plan, as modified, are acceptable to the Governor and, therefore, will apply within State waters of the Sanctuary upon the effective date of these regulations.

The following is the text of the June 5, 1997, letter from the Governor of Hawaii to the Secretary of Commerce.

June 5, 1997.

Dr. D. James Baker,  
Under Secretary and Administrator, National Oceanic and Atmospheric Administration,  
Herbert C. Hoover Building, Room 5128,  
14th Street and Constitution Avenue, N.W.,  
Washington, D.C. 20530.

Dear Dr. Baker: This is to inform you that I have agreed to include selected portions of State waters within the boundary of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIIWNMS). It is our intention to create a State-Federal partnership with the National Oceanic and Atmospheric Administration (NOAA) for management of the Sanctuary under the provisions of the HIIWNMS management plan, implementing regulations, and the intergovernmental compact agreement, with certain conditions to be applied to the portions of the Sanctuary within State waters. It is my understanding that if the conditions set forth below are not met, the Sanctuary designation and regulations shall not take effect and become final in State waters.

It is also my understanding that the inclusion of State waters within the Sanctuary boundary does not convey title to the Federal government; nor does the State relinquish authority over any State-owned submerged lands, waters or other State-

owned resources, including the power to lease or otherwise encumber the same.

In accordance with subsection 304(b)(1) of the National Marine Sanctuaries Act, the following terms are certified as unacceptable in state waters:

1. Sanctuary emergency regulations unless and until first approved by the Governor. Accordingly, the following sentence shall be added to section 922.185 CFR as published on March 28, 1997: "Emergency regulations shall not take effect in Hawaii territorial waters until approved by the Governor of Hawaii."
2. Sanctuary fees for allowed public uses unless first approved by the Governor.
3. Requirements for the State of Hawaii or county governments to provide funding for the implementation of the Sanctuary management plan, regulations, or the intergovernmental compact agreement.
4. Sanctuary fishing regulations in State waters unless established by the Board of Land and Natural Resources.
5. NOAA's Preferred Sanctuary boundary in State waters except the waters:
  - a. from Kailua Point eastward to Mokolae Pt. on Kauai;
  - b. from Puana point northward to Mahie Point (just south of Kahana Bay) and from the Ala Wai Canal (Diamond Head side) eastward to Makapuu Pt. on Oahu;
  - c. from Eio Pt. south and eastward to Cape Halawa on Molokai;
  - d. from Lipos Point south to Hanamanioa Lighthouse on Maui;
  - e. all State waters surrounding Lanai;
  - f. from Upolu Pt. south to Keahole Pt. on Hawaii.

Accordingly, NOAA shall amend 15 C.F.R. Section 181 and Appendix A to the HIIWNMS Sanctuary Regulations to reflect the State Boundary Selected.

6. Implementation of the management plan in its entirety unless the intergovernmental Compact Agreement includes the following:

- a. The Governor shall designate a State employee to serve as an equal partner to work in consultation with the Sanctuary Manager for the oversight of Sanctuary operations. The State of Hawaii and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the State and NOAA shall be decided by the managing partners consistent with State and Federal laws.
- b. The State reserves the right to initiate proposed changes to the management plan, and NOAA, if necessary, shall initiate the Federal rule promulgation process required to make revisions to Sanctuary regulations requested by the State.
- c. The goals and objectives of the Sanctuary management plan were developed to complement and coordinate existing management efforts, and, in part, to address some of the objectives and policies contained in the National Marine Fisheries Service (NMFS) Final Recovery Plan (Recovery Plan) for the Humpback Whale. Throughout the implementation of the management plan, therefore, NOAA's Sanctuaries & Reserves





Division in coordination with the State, will consult with NMFS to evaluate the effectiveness of existing management efforts in achieving those objectives and policies, including whether additional measures (e.g., regulations or critical habitat) to protect the humpback whale and its habitat are needed. Prior to making a final decision on whether to designate critical habitat for humpback whales in Hawaii state waters under the Endangered Species Act, NOAA will fully involve and consult with the State.

d. The designation of the Sanctuary does not limit or restrict in any way State or federal government actions to respond to oil or hazardous material spill. The Sanctuary will work within established procedures of the Oceania Regional Response Team for oil or hazardous material spill response and planning.

a. Section 304(e) of the National Marine Sanctuaries Act requires the Secretary of Commerce to review the Sanctuary's Management Plan and implementing regulations every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of the site-specific management techniques, and revise the management plan as necessary to fulfill the purposes and policies of the Act. When the Management Plan and implementing regulations for the HHHNMS are re-evaluated, the Secretary of Commerce will re-propose the management plan and regulations in their entirety and the State of Hawaii will have the opportunity to review the Management Plan and regulations, in their entirety, and indicate if any of all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in State waters.

Accordingly, the following provisions shall be added to 15 CFR section 922.180: "Section 304(e) of the National Marine Sanctuaries Act requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will re-propose the Sanctuary regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary."

We believe that implementation of the plan provides for balanced protection of Hawaii's endangered State marine mammal and its marine habitat, and advances the state and federal commitment to jointly manage these resources. We look forward to that continuing relationship.

With warmest personal regards,

Aloha,

Benjamin J. Cayetano.

cc: Mr. Allen Tom, NOAA

#### NOAA's Response to Governor's Certification

In response to the Governor's certification of June 5, 1997, NOAA has amended those regulations certified by the Governor as being unacceptable in

State waters. With the modifications, the entire regulations and management plan are accepted by the Governor and will apply throughout the Sanctuary, including within State waters of the Sanctuary, upon their effective date. The basis and purpose of the changes to the regulations are as follows.

(1) Per item number 1 of the Governor's letter which certified as unacceptable in State waters emergency regulations unless first approved by the Governor, § 922.185 of subpart Q is amended by adding "Emergency regulations shall not take effect in Hawaii State waters until approved by the Governor of Hawaii." This is consistent with the management plan which provides that any new regulation or substantive modification to existing Sanctuary regulations will require the Governor's approval in order to take effect in State waters of the Sanctuary.

(2) Item 2 of the Governor's certification certified as unacceptable in State waters Sanctuary user fees unless first approved by the Governor. However, by law NOAA is precluded from instituting any user fees under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. Consequently, no amendment to the Sanctuary regulations is necessary. By law, the term "user fee" does not include any fee authorized by section 310 of the NMSA (Special Use Permits); any gift or donation received under section 311 of the NMSA; or any monetary or in-kind contributions under section 316 of the NMSA.

(3) Item 3 of the Governor's certification certified as unacceptable in State waters requirements for the State of Hawaii or County governments to provide funding for the implementation of the management plan, regulations or Intergovernmental Compact Agreement. No changes were made to the regulations as regards this item of the Governor's certification because there is no regulatory component necessary for its implementation. There is no mandate in the management plan for the State or counties to provide funding for the Sanctuary. Further, as stated in the March 28, 1997, *Federal Register* document, the final regulations contain no Federal mandates and therefore are not subject to the Unfunded Mandates Reform Act of 1995.

(4) Per item number 4 of the Governor's letter which certified as unacceptable in State waters Sanctuary fishing regulations unless established by the State of Hawaii's Board of Land and Natural Resources, NOAA amended § 922.184 of subpart Q by adding a new paragraph (c) to read "Any Sanctuary fishery regulations shall not take effect

in Hawaii State waters until established by the State Board of Land and Natural Resources." The Governor's certification did not specify a particular regulation to be amended, but NOAA determined that an appropriate place for such provision is in the Sanctuary specific regulations at a new § 922.184(c) of subpart Q. Again, this provision is consistent with the portion of the management plan that provides that any new regulation must be approved by the State (Governor) in order to take effect in State waters of the Sanctuary.

(5) Per item number 5 of the Governor's letter which certified as unacceptable in State waters NOAA's preferred Sanctuary boundary, except the waters:

- a. from Kaili Point, eastward to Mokolae Point on Kauai;
- b. from Puana Point northward to Mahie Point (just south of Kahana Bay) and from the Ala Wai Canal (Diamond Head side) eastward to Makapuu Point on Oahu;
- c. from Ilio Point south and eastward to Cape Halawa on Molokai;
- d. from Lipos Point south to Hanamania Lighthouse on Maui;
- e. all State waters around Lanai;
- f. from Upolu Point south to Keahole Point on Hawaii.

NOAA has amended § 922.181 and Appendix A to subpart Q to reflect the modified final Sanctuary boundary to accommodate the Governor's requested changes and to clarify boundary end points. The following list summarizes the changes made, in consultation with the state, to NOAA's preferred alternative boundary listed in the final management plan and regulations. Unless otherwise stated, the boundary goes from the shoreline to the 100 fathom (600 feet) isobath.

#### Kauai

The location of the western boundary point (Kaili Point) remains unchanged. The eastern boundary point was changed from Makahuena Point to Mokolae Point to reflect the Governor's letter. Both Hanamaulu Bay and Nawiliwili Harbor were removed from the excluded harbors list since they are no longer physically located within the Sanctuary boundary.

#### North Oahu

No changes were made to the location of Puana Point and Mahie Point as identified in the final management plan. However, the final language states from "Puana Point eastward to Mahie Point (just south of Kahana Bay)" using eastward instead of northward to more





accurately reflect the location of the point.

#### South Oahu

The Governor's letter requested that the Oahu western boundary point start from the Ala Wai Canal (Diamond Head side). Further consultation with the State of Hawaii clarified the location of this point to be at the Kapahulu Groin in Waikiki, which is the intersection of a perpendicular line from where the Ala Wai Canal begins (near Diamond Head) and the ocean. The Ala Wai Small Boat Basin was removed from the excluded harbors list since it no longer is physically located within the Sanctuary boundary. NOAA also generated two closure bounds (see bounds #21 and #22 on Figure 2 in Appendix A to the final rule) to clarify that Kaupa Pond (Hawaii Kai) is not included in the boundary. The original boundary file given to NOAA from the state mistakenly included this area. The two closure bounds were drawn at the outer side of the bridges for the coast highway crossing the two outlets.

#### Maui County (Maui, Molokai, Lanai, Penguin Bank)

The final boundary around Maui County was modified to reflect the Governor's request to include the areas from Cape Hakawa, Molokai south and westward to Ilio Point, and from Lipoa Point, Maui south to the Hanamania Lighthouse. No changes were made to the boundary around Lanai or Penguin Bank. In consultation with the State of Hawaii, the boundary between Cape Hakawa, Molokai and Lipoa Point, Maui (across the deepwater Pailolo Channel) was redrawn as a straight line to simplify the boundary. NOAA generated additional boundary coordinates to construct the boundary around the northeast shore of Kahoolawe. This line follows a 3 nautical mile arc around the island of Kahoolawe, which is not included within the Sanctuary, and intersects the 100 fathom line. NOAA also provided some coordinates for a technical closure correction of the boundary in an area north of Kahoolawe (see bound #11 in Figure 2, Appendix A to the final rule). This is an area of complex bathymetry, where the 100 fathom isobath varies tremendously. NOAA and the State agreed to simplify the boundary in the area by drawing a line across the area, thus eliminating the area of complex bathymetry. This was depicted in both the draft and final environmental impact statements and management plans. Kahului Harbor on Maui was removed from the excluded harbors list since it no longer is

physically located within the Sanctuary boundary.

#### Hawaii (Big Island)

The Sanctuary boundary around the Big Island was modified to reflect the Governor's letter requesting that the boundary start at Upolu Pt. and go south to Keshole Point, Hilo Harbor, Honokohau Boat Harbor, and Keauhou Bay boat harbors were removed from the excluded harbor list since they are no longer physically located within the Sanctuary boundary.

These boundary changes made in response to the Governor's certification are within the range of boundary alternatives contained in the draft and final environmental impact statements/management plans for the Sanctuary, and within the scope of the boundary identified in the final regulations published on March 28, 1997. The list of ports and harbors excluded from the Sanctuary boundary has also been modified according to the revised final Sanctuary boundary.

(6) Per item number 6 of the Governor's letter which certifies as unacceptable in State waters the implementation of the management plan unless the Intergovernmental Compact Agreement and § 922.180 is amended to add a provision regarding a five year review of the management plan and regulations, § 922.180 of subpart Q is amended by adding:

Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of the management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

A corresponding amendment, as well as other amendments to address elements of item 6 of the Governor's letter, have also been made to the Compact Agreement which was signed by the Governor on May 4, 1998. The modification to the regulation essentially codifies the requirement under the NMSA to conduct reviews of Sanctuary management plans and regulations every five years. In the HIHWNMS context, NOAA has determined that at the conclusion of the five year review of the Sanctuary, it will repropose the regulations and

management plan for the Governor's review, similar to the forty-five day review period under the NMSA that preceded this notice.

For clarity, this document publishes the revised Sanctuary specific regulations at 15 CFR part 922, subpart Q in their entirety, which will replace subpart Q as published in the March 28, 1997 Federal Register document. Consequently, subpart Q as published in this rule and all remaining regulations in the March 28, 1997, rule shall become effective December 29, 1999.

### III. Summary of the Changes to the Final Regulations at Subpart Q

The following summarizes the Sanctuary regulations at 15 CFR part 922, subpart Q, as modified by this document. Except as noted below, this section remains the same as in the March 28, 1997, Federal Register document. With the changes, the final rule published on March 28, 1997, at 62 FR 14799, and the revision of 15 CFR part 922, subpart Q, in this document shall apply throughout the Sanctuary, including within State waters of the Sanctuary, on December 29, 1999.

Section 922.180 sets forth the purpose of the regulations—to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. Section 922.180 also describes the five-year review of the management plan and regulations for the Sanctuary.

Section 922.181 and Appendix A to subpart Q set forth the boundary of the Sanctuary. Appendix A provides a text description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The Sanctuary boundary is also depicted in Figures 1–3. Digital files, available in three common formats (ESRI Shape File, MapInfo Tables, and an ASCII Exchange Format) are available from the Sanctuary office in Kihui, Maui, at the address listed above. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the agreed lateral boundary and exclusion areas, and the 100 fathom



NATIONAL MARINE  
SANCTUARIES



isobath digitized from the following 1:80,000 scale NOAA nautical charts: 19327—West Coast of Hawaii (9th ED, 4/29/89), 19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97), 19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989), 19357—Island of Oahu (20th ED, 9/21/1996), and 19361—Island of Kauai (8th ED, 7/17/1993).

For the portion of the Lanai region of the HHHWNMS west of Chart 19351, [157°42.8' west] the 100 fathom contour was derived from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

Section 922.184(c) provides that any Sanctuary fishing regulations will not take effect in State waters until established by the State Board of Land and Natural Resources.

Section 922.185 provides that where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or imminent risk of such destruction of, loss of, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. No emergency regulation will take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

#### IV. Miscellaneous Rulemaking Requirements

Except as noted below, this section remains the same as in the March 28, 1997 Federal Register notice.

##### National Marine Sanctuaries Act

Section 304 of the National Marine Sanctuaries Act provides that Congress and the Governor have forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., regulations and management plan). After forty-five days, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the State waters portion of the Sanctuary. The forty-five day review period began on March 28, 1997, the date the final regulations were published in the Federal Register, and concluded on June 6, 1997. During that period the Governor submitted to the Secretary a certification that the management plan and certain regulations were unacceptable unless

specific amendments were made to such regulations. NOAA amended those regulations certified as unacceptable by incorporating the Governor's changes. Consequently, upon their effective date the regulations, as revised by this Federal Register document, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

##### Administrative Procedures Act

The final Sanctuary regulations at 15 CFR part 922, subpart Q, which were promulgated on March 28, 1997, through notice and comment rulemaking, have been amended pursuant to and consistent with the procedures required under the National Marine Sanctuaries Act and Hawaiian Islands National Marine Sanctuary Act. The NMSA and HINMSA provide that during the review period of forty-five day continuous session of Congress, the Governor may certify to the Secretary of Commerce any regulation as unacceptable and, if the Governor so certifies, the regulation shall not take effect in the State waters portion of the Sanctuary. As the changes requested by the Governor and herein made by NOAA are within the scope of the proposed and final rules, additional prior notice and opportunity for public comment are not required by 5 U.S.C. 553. The basis and purpose of the changes to the final regulations requested by the Governor have been set forth above.

##### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 29, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended by revising subpart Q to read as follows:

##### Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

Section 922.180 Purpose.  
922.181 Boundary.  
922.182 Definitions.  
922.183 Allowed activities.  
922.184 Prohibited activities.

922.185 Emergency regulations.  
922.186 Penalties; appeals.  
922.187 Interagency cooperation.

##### Appendix A to Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Authority: 16 U.S.C. 1431 et seq. and subtitle C, title II, Pub. L. 102-587, 106 Stat. 5055.

##### Subpart Q—[Revised]

##### § 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities, to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing; and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations





contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

#### § 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kailua Point eastward to Mokuia Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puana Point eastward to Mahie Point, and from the Kapahuu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

#### Hawaii (Big Island)

Kawaihae Boat Harbor & Small Boat Basin

#### Lanai

Kaumalapau Harbor, Manele Harbor

#### Mau

Lahaina Boat Harbor

Maalaea Boat Harbor

#### Molokai

Hale o Lono Harbor

Kaunakakai Harbor

#### Oahu

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in Appendix A of this subpart Q.

#### § 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Pub. L. 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 et seq.).

*Adverse impact* means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

*Alteration of the seabed* means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

*Habitat* means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

*Military activities* means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

*Sanctuary* means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

*Sanctuary resource* means any humpback whale, or the humpback whale's habitat within the Sanctuary.

*Shoreline* means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

*Take or taking a humpback whale* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 et seq., and 16 U.S.C. 1431 et seq.

#### § 922.183 Allowed activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 313 of the NMSA and § 922.46 of this part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this § 922.183 are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a) of this § 922.183. Paragraphs (a)(1) through (a)(5) of § 922.184 apply to these classes of activities unless—

(1) they are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (a)(5) of



§ 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this § 922.183 is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

**§ 922.184 Prohibited activities.**

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) requires a Federal or State permit, license, lease, or other authorization; and

(ii) is conducted:

(A) without such permit, license, lease, or other authorization, or

(B) not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (a)(5) of this § 922.184 do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this § 922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

**§ 922.185 Emergency regulations.**

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

**§ 922.186 Penalties; appeals.**

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than \$100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in

accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

**§ 922.187 Interagency Cooperation.**

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

**Appendix A to Subpart Q—Hawaiian Islands Humpback Whale, National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.**

Appendix A provides a text and pictorial (see Figures 1–3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihel, Maui, at the address listed above or by calling (808) 879-2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as





supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts—19327—West Coast of Hawaii (9th ED, 4/29/89),

19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),

19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/31/1989),

19357—Island of Oahu (20th ED, 9/21/1996), and

19361—Island of Kauai (8th ED, 7/17/1993).

For the portion of the Lanai region of the HIIHWNMS west of Chart 19351 [157°42.8' west] the 100 fathom contour was derived

from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/29/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

#### Sanctuary Boundary

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

1. To the 100-fathom (183 meter) isobath from Kailua Point eastward to Mōkolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Pūanā Point eastward to Mahie Point, and from the Kapahulu Groyne in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanalei Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

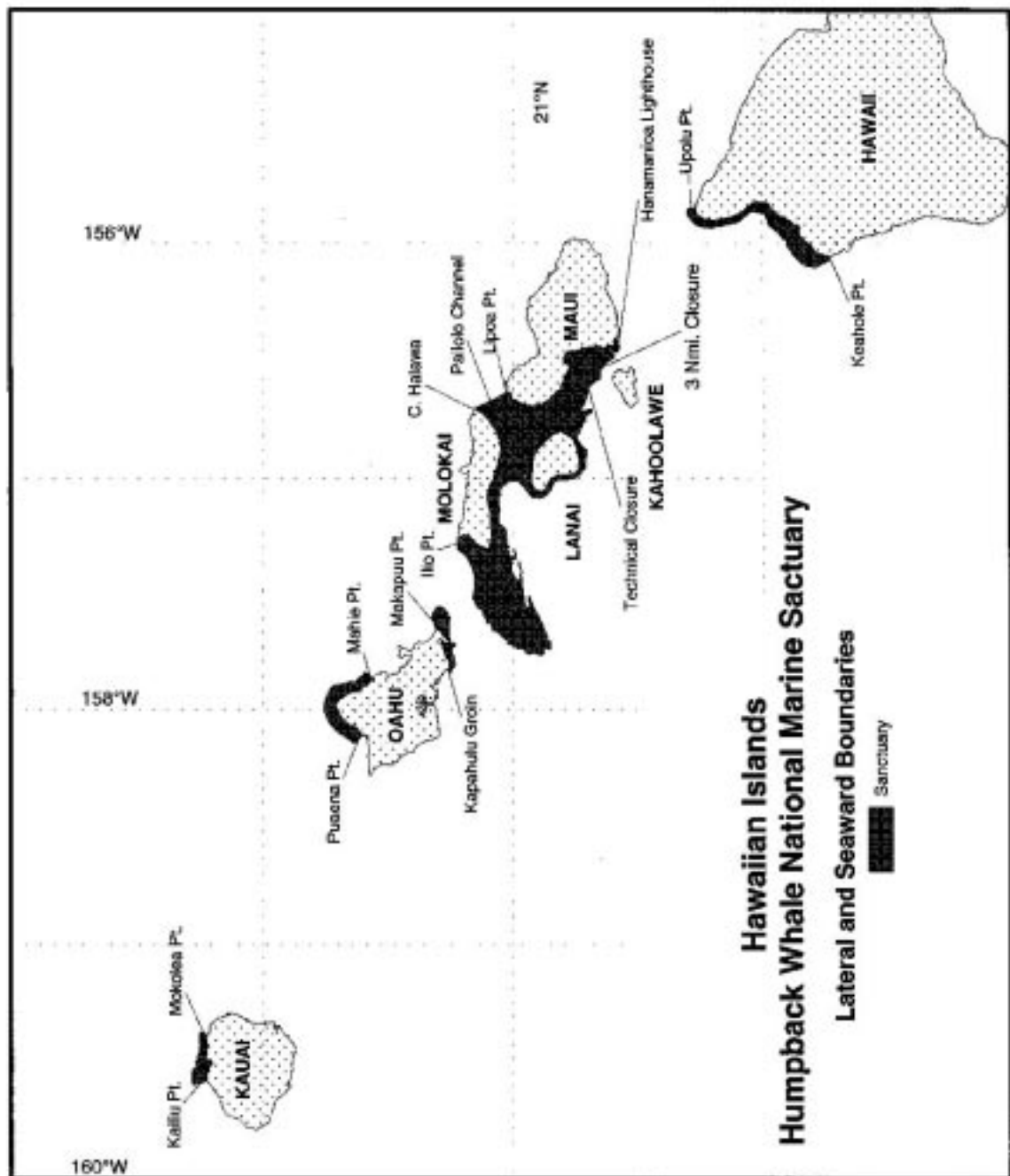
5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

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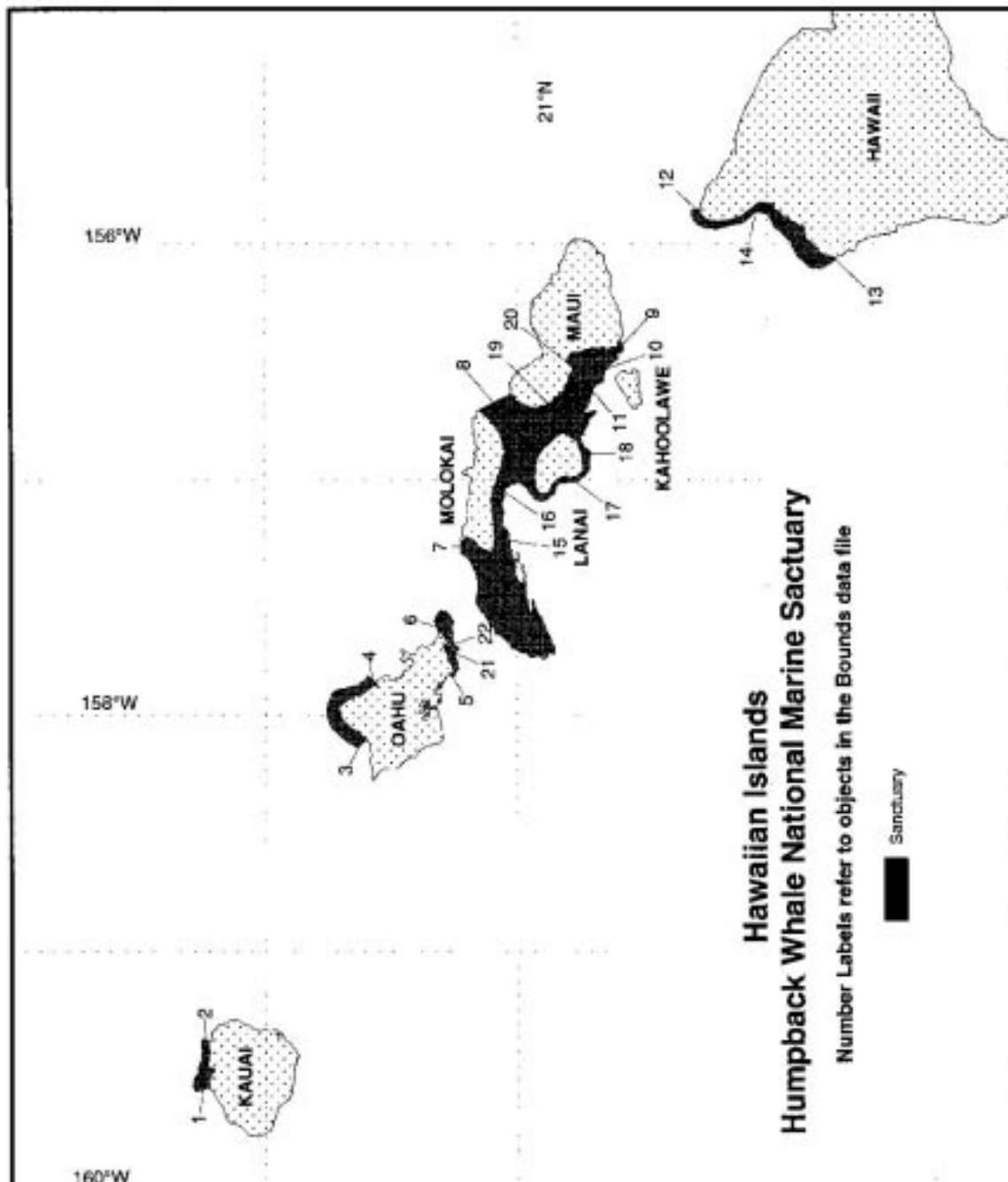
66574 Federal Register / Vol. 64, No. 228 / Monday, November 29, 1999 / Rules and Regulations



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B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Fig. 2).



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## 66576 Federal Register / Vol. 64, No. 228 / Monday, November 29, 1999 / Rules and Regulations

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1	Kaliu Pt., Kauai	2	22°13'24.7"	-159°34'52.2"
			22°16'33.5"	-159°35'59.4"
2	Mokolea Pt., Kauai	2	22°13'29.9"	-159°22'55.8"
			22°14'55.4"	-159°22'19.3"
3	Puana Pt., N. Oahu	2	21°38'24.8"	-158°8'26.0"
			21°38'8.4"	-158°6'24.5"
4	Mahie Pt., N. Oahu	2	21°33'37.3"	-157°51'51.9"
			21°35'32.2"	-157°50'56.5"
5	Kapahulu Grein, S. Oahu	3	21°16'5.7"	-157°50'27.5"
			21°16'8.1"	-157°49'25.7"
			21°16'6.2"	-157°49'23.8"
6	Makapu Pt., S. Oahu	2	21°18'39.6"	-157°38'56.7"
			21°19'44.7"	-157°35'46.1"
7	Ilio Pt., Molokai	2	21°13'25.7"	-157°18'45.8"
			21°13'27.0"	-157°15'14.4"
8	Pailolo Channel, C. Hawaii to Lipoa Pt.	2	21°11'29.8"	-156°38'22.0"
			21°9'29.5"	-156°42'37.2"
9	Hanalei Lighthouse, Maui	2	20°34'21.8"	-156°26'51.1"
			20°34'58.4"	-156°24'45.2"
10	3 Nmi. closure around Kahoolawe	51	20°35'58.1"	-156°29'32.0"
			20°35'59.9"	-156°29'33.0"
			20°36'3.9"	-156°29'35.5"
			20°36'6.8"	-156°29'36.9"
			20°36'16.3"	-156°29'43.1"
			20°36'25.7"	-156°29'49.9"
			20°36'34.8"	-156°29'57.3"
			20°36'39.9"	-156°30'2.2"
			20°36'43.8"	-156°30'5.5"
			20°36'50.8"	-156°30'12.1"
			20°36'59.0"	-156°30'16.5"
			20°37'8.7"	-156°30'22.7"
			20°37'18.1"	-156°30'29.5"
			20°37'27.0"	-156°30'36.8"
			20°37'35.5"	-156°30'44.8"
			20°37'43.4"	-156°30'53.4"
			20°37'50.9"	-156°31'2.4"
			20°37'56.4"	-156°31'10.0"
			20°37'59.0"	-156°31'13.2"
			20°38'6.0"	-156°31'22.7"
			20°38'8.6"	-156°31'26.8"
			20°38'10.8"	-156°31'29.9"
			20°38'17.2"	-156°31'39.9"
			20°38'18.9"	-156°31'43.0"
			20°38'23.4"	-156°31'48.4"
			20°38'30.3"	-156°31'58.0"
			20°38'36.6"	-156°32'7.9"
			20°38'42.4"	-156°32'18.3"
			20°38'43.4"	-156°32'20.5"
			20°38'46.4"	-156°32'25.9"
			20°38'51.5"	-156°32'36.7"
			20°38'56.0"	-156°32'47.7"
			20°38'59.8"	-156°32'59.1"
			20°39'3.0"	-156°33'10.7"
			20°39'4.0"	-156°33'15.7"
			20°39'4.4"	-156°33'17.0"
			20°39'5.3"	-156°33'21.1"
			20°39'6.8"	-156°33'26.7"
			20°39'8.8"	-156°33'40.7"
			20°39'8.9"	-156°33'44.4"
			20°39'9.7"	-156°33'49.8"
			20°39'10.1"	-156°33'53.8"
			20°39'11.0"	-156°34'0.3"
			20°39'12.1"	-156°34'12.4"
			20°39'12.5"	-156°34'24.4"
			20°39'12.4"	-156°34'25.4"
			20°39'12.6"	-156°34'30.5"
			20°39'12.2"	-156°34'42.8"
			20°39'11.8"	-156°34'47.7"
			20°39'11.7"	-156°34'48.9"
			20°39'11.3"	-156°34'55.8"
11	Technical Closure	2	20°41'39.2"	-156°37'7.5"
	North of Kahoolawe		20°41'45.0"	-156°38'3.8"





**Federal Register / Vol. 64, No. 228 / Monday, November 29, 1999 / Rules and Regulations 66577**

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
12 .....	Upolu Pt., Hawaii (Big Island) .....	2	20°16'5.3"	— 155°51'10.5"
			20°17'59.9"	— 155°51'17.2"
13 .....	Keshole Pt., Hawaii (Big Island) .....	2	19°43'39.6"	— 156°3'42.7"
			19°43'41.5"	— 156°4'14.5"

C. Excluded Ports and Harbors Bounds (see Figure 3).

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**Figure 3**

Bound No. (Fig 2)	Geographic Name	No. of Points	Latitude	Longitude
14	Kaunakakai Harbor, Big Island exclusion	2	20°2'14.3"	-155°50'2.5"
			20°2'25.3"	-155°49'57.7"
15	Haleakala Harbor, Molokai exclusion	2	21°5'3.5"	-157°14'58.6"
			21°5'4.8"	-157°14'55.2"
16	Kaunakakai Harbor, Molokai exclusion	4	21°5'13.9"	-157°1'35.7"
			21°4'49.2"	-157°1'58.3"
			21°4'38.5"	-157°1'41.2"
			21°5'7.4"	-157°1'15.0"
17	Kaumalapau Harbor, Lanai exclusion	2	20°47'9.2"	-156°59'32.2"
			20°47'1.1"	-156°59'31.3"
18	Manele Harbor, Lanai exclusion	2	20°44'33.2"	-156°53'12.9"
			20°44'35.2"	-156°53'14.1"
19	Lahaina Harbor, Maui exclusion	2	20°52'18.3"	-158°40'45.0"
			20°52'18.8"	-158°40'44.0"
20	Maalea Harbor, Maui exclusion	2	20°47'32.1"	-158°30'35.0"
			20°47'24.8"	-158°30'39.6"
21	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21°17'7.0"	-157°43'7.7"
			21°17'8.5"	-157°43'7.0"
22	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21°16'53.3"	-157°42'42.7"
			21°16'51.9"	-157°42'40.3"

[FR Doc. 99-22667 Filed 11-26-99; 8:45 am]  
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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1000

#### Statement of Organization and Functions

**AGENCY:** Consumer Product Safety  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the division of the Directorate for Epidemiology and Health Sciences into separate directorates for epidemiology and for health sciences.

**EFFECTIVE DATE:** November 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-504-0980.

**SUPPLEMENTARY INFORMATION:** The Commission has separated the former Directorate for Epidemiology and Health Sciences into a separate Directorate for Epidemiology and a separate Directorate for Health Sciences. To reflect this change, § 1000.27 is being revised to remove descriptions of the health sciences functions that have been incorporated in a new § 1000.28. Some editorial changes have also been made. Section 1000.12(c), listing the organizational units reporting to the Assistant Executive Director for Hazard Identification and Reduction, is being revised to separately list the Directorate

for Epidemiology and the Directorate for Health Sciences.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the Federal Register. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provisions of the Act.

#### List of Subjects in 16 CFR Part 1000

Organization and functions  
(government agencies).

Accordingly, part 1000 is amended as follows:

#### PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

**Authority:** 5 U.S.C. 552(a).

2. Paragraph (c) of section 1000.12 is revised to read as follows:

#### § 1000.12 Organizational structure.

\* \* \* \* \*

(c) The following units report directly to the Assistant Executive Director for Hazard Identification and Reduction:

- (1) Directorate for Economic Analysis;
- (2) Directorate for Epidemiology;
- (3) Directorate for Health Sciences;
- (4) Directorate for Engineering Sciences;
- (5) Directorate for Laboratory Sciences.

#### §§ 1000.28 and 1000.29 [Redesignated as §§ 1000.29 and 1000.30]

3. Sections 1000.28 and 1000.29 are redesignated as sections 1000.29 and 1000.30 respectively.

4. Section 1000.27 is revised to read as follows:

#### § 1000.27 Directorate for Epidemiology.

The Directorate for Epidemiology, managed by the Associate Executive Director for Epidemiology, is responsible for the collection and analysis of data on injuries and deaths associated with consumer products. The Directorate has two divisions: the Data Systems Division and the Hazard Analysis Division. The Data Systems Division operates the national data collection systems which provide the data that serve as the basis for the Commission's estimates of the numbers of deaths and injuries associated with consumer products. These data systems include the National Electronic Injury Surveillance System, a nationally representative sample of hospital emergency departments; a death certificate file, which contains data obtained from death certificates on deaths associated with consumer products; and the Injury and Potential Injury Incident file, which contains information on incidents associated with consumer products, based on news clips, medical examiner reports, hotline reports, internet complaints, referrals, etc. The Hazard Analysis Division conducts statistical analysis of these data and conducts epidemiologic studies to estimate the numbers of injuries and deaths associated with various consumer products and to examine factors associated with these injuries and deaths. In addition, staff in



## Appendix 3: Environmental Assessment for the Revised Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary

### Purpose and Need

#### National Marine Sanctuary Program

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Sanctuary Program (NMSP) is a national system of 13 sites that protect over 13,000 square nautical miles of marine resources, and range in all sizes and shapes from 0.25 to 4,024 square nautical miles. The mission of the NMSP is to serve as the trustee for this system of marine protected areas, and to conserve, protect, and enhance their biodiversity, ecological integrity, and cultural legacy. Its goals are appropriate to the unique diversity contained within individual sites. They may include restoring and rebuilding marine habitats or ecosystems to their natural condition or monitoring and maintaining already healthy areas.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with nationally significant aesthetic, ecological, historical, or recreational values as National Marine Sanctuaries. The primary objective of this law is to protect marine resources, such as coral reefs, sunken historical vessels or unique habitats, while facilitating all public and private uses of those resources that are compatible with the primary objective of resource protection. Sanctuaries, frequently compared to underwater parks, are managed according to Management Plans, prepared by the NMSP on a site-by-site basis.

#### Hawaiian Islands Humpback Whale National Marine Sanctuary

The Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) was Congressionally designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA) on November 4, 1992 (Subtitle C of Public Law 102-587, the Oceans Act of 1992).

Section 2304 of the HINMSA establishes the Sanctuary's purposes as follows:

- to protect humpback whales and their habitat within the Sanctuary;
- to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;
- to manage human uses of the Sanctuary consistent with the HINMSA and NMSA; and
- to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

#### Need For This Environmental Assessment

During the original designation process for the Sanctuary, during which boundaries were chosen and regulations developed, a draft Management Plan/Environmental Impact Statement (EIS) (NOAA 1997) was developed. The EIS portion examined alternatives and presented environmental and socioeconomic analyses of those alternatives.

At the time of designation, NOAA made a commitment to the State of Hawai'i, that five years after the management plan and regulations had become effective, NOAA, in consultation with the State



### Appendix 3: Environmental Assessment

of Hawai'i, would evaluate the progress made toward implementing the management plan, regulations, and goals for the Sanctuary. NOAA also agreed that after the evaluation was complete, NOAA would then resubmit the management plan and regulations in their entirety, as far as they effect State waters, to the Governor for his approval.

The Sanctuary began its five-year review about two years ago, by conducting a review of the existing management plan with staff and members of the Sanctuary Advisory Council. In reviewing the original management plan, it became clear that although a completely rewritten management plan was not necessary, some restructuring and revising of the document would be beneficial to the Sanctuary. First, the Sanctuary has accomplished many of the tasks outlined for it in the original management plan that can be removed. Second, the goals and objectives originally outlined needed to be revised to reflect the current and future direction of the Sanctuary and the 2000 amendment of the NMSA. Finally, the structure of the original management plan did not follow the formats developed in the last three years for ongoing management plan reviews at other Sanctuaries. The NMSP and the State of Hawai'i decided to revise certain parts of the original management plan and reformat the document, during the five-year review. The review also led to a summary of the Sanctuary's accomplishments that have been prepared in a State of the Sanctuary Report (NOAA 2001).

Once the vision, goals, and objectives had been revised, Sanctuary staff and members of the Sanctuary Advisory Council met in several structured workshops to revise and update the tasks and projects outlined in the management plan, and then reorganize the management plan into action plans, a format more in keeping with the template used for current Sanctuary management plans.

Specifically, changes made to the management plan include:

- Sanctuary description updated;
- New vision statement adopted;
- Goals and objectives updated to reflect the new vision statement and current status of Sanctuary resources and efforts;
- Management plan restructured into a series of action plans (natural resource protection, education and outreach, research and monitoring, cultural resource enhancement, and administration) in keeping with the templates of current Sanctuary management plans;
- New set of outcomes and performance indicators included;
- Most short-term objectives involving development of staff and infrastructure removed (since they have been accomplished); those remaining--revenue enhancement and identification of other resources for possible inclusion in the Sanctuary--incorporated into the draft revised management plan;
- Emphasis on cultural resources expanded;
- Less emphasis placed on development of SAC infrastructure and more on enhancement of SAC operation;
- More emphasis placed on volunteer programs;
- Strategic educational plan to be developed;
- Administrative procedures related to research projects to be planned; and
- Ten-year facility plan to be developed.

The draft revised management plan was prepared by NOAA and the State of Hawai'i, and released for public review on March 19, 2002, for approximately 60 days (67 FR 12525). During that time, seven public meetings were held in the main Hawaiian Islands, on O'ahu, Kaua'i, Maui, two on Hawai'i (the Big Island), Lāna'i, and Moloka'i. Approximately 70 people attended and over 300 comments



were collected. During the same time period, approximately 40 written comments were received by email and regular mail. A synthesis of comments is available on the Sanctuary's website at [www.hihwnms.nos.noaa.gov/planreview/](http://www.hihwnms.nos.noaa.gov/planreview/) (please see Appendix 4 for a response to the comments received).

In response to staff, SAC, and public comments, a number of changes were made to produce the final revised management plan. A description detailing the public meeting process for the five-year management plan review has been added. In response to the overwhelming public comments received to protect additional resources and species, the process to include new species has been accelerated and better detailed. The intent to develop a cultural protocol to respond to strandings has been incorporated into Strategy CRE-2 *Nurture increased public awareness and appreciation of traditional Hawaiian values and practices related to ocean use*. Two new appendices, the Final Rule as published in the *Federal Register* on November 19, 1999, detailing the Sanctuary's boundaries and regulations, and the response to comments received, have been incorporated as Appendices 2 and 4 respectively. The remainder of changes were minor and include such information as updating partner lists and the inclusion of cost estimates.

The final revised management plan does not include any regulatory or boundary changes.

The final revised management plan will be submitted to the Governor for his consideration as far as it applies in State waters. Appropriate action will be taken upon receipt of the Governor's decision later in 2002.

## Description of Alternatives

The original Management Plan/Environmental Impact Statement (NOAA 1997) described a number of alternatives for the management framework of the Sanctuary, among them:

- a Sanctuary with differing boundary options;
- a Sanctuary with differing regulatory options; and
- a Sanctuary with differing management regimes, including one that would only be seasonal in nature to coincide with the presence of the humpback whales in Hawai'i.

Extensive analyses of possible environmental and socioeconomic impacts were conducted for each alternative before the current boundaries, regulations, and management regime were selected.

Early in the five-year review process, NOAA considered preparing a whole new management plan, but decided this was unwarranted due to:

- existing boundaries and regulations are adequate to protect humpback whales and their habitat;
- the issues facing the Sanctuary are largely the same; and
- there are a number of ongoing and unfinished projects outlined in the existing management plan that NOAA and the State wish to continue.

Therefore, during this five-year evaluation, there are only two alternatives being considered: leaving the current management plan in place or revising the current management plan to reflect those changes as noted above. A discussion of each of those alternatives follows.



### Alternative A: Take No Action

This alternative would keep the existing management plan from February 1997 in place in the out of date format for older Sanctuary management plans and including all tasks that have already been completed, and existing goals and objectives. Keeping the existing management plan will prevent the Sanctuary from incorporating new performance measures to help gauge its effectiveness and will make the task more difficult when the Sanctuary prepares to write a complete new management plan in approximately five years.

### Alternative B: Propose a Revised Management Plan (Preferred)

This alternative proposes the revisions and updates contained in this document. The updates reflect the current context of the Sanctuary and NMSP, shortening and streamlining the document; updating the vision, goals, and objectives; removing old tasks and incorporating new and planned projects; reformatting the document so it is in line with the preferred format of Sanctuary management plans; laying out performance measure with which to better evaluate the Sanctuary's effectiveness; and laying the groundwork for drafting a complete new management plan in approximately five years.

## **Affected Environment**

A complete, referenced description of the affected environment is contained in the existing Management Plan/Environmental Impact Statement for the Sanctuary (NOAA 1997), and has been updated in this revised management plan. The following information is presented for the ease of individuals reading this Environmental Assessment.

### Boundary

The boundary of the Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

- (1) To the 100-fathom (183 meter) isobath from Kāilio Point eastward to Mōkōlea Point, Kaua'i;
- (2) To the 100-fathom (183 meter) isobath from Pua'ena Point eastward to Māhie Point, and from the Kapahulu Groin in Waikīkī eastward to Makapu'u Point, O'ahu;
- (3) To the 100-fathom (183 meter) isobath from Cape Hālawā, Moloka'i, south and westward to 'Īlio Point, Moloka'i; southwestward to include Penguin Banks; eastward along the east side of Lāna'i to the waters seaward of the three nautical mile limit north of Kaho'olawe, to the Hanamanaio Light-house on Maui, and northward along the shoreline to Līpoa Point, Maui;
- (4) To the deep water area of Pailolo Channel from Cape Hālawā, Moloka'i, to Līpoa Point, Maui, and southward;
- (5) To the 100-fathom (183 meter) isobath from 'Upolu Point southward to Keāhole Point, Hawai'i.

All commercial ports and small boat harbors in the State of Hawai'i are excluded from the Sanctuary boundary.



The establishment of the Sanctuary in no way conveys, or intends to convey, to NOAA any title or ownership of Hawai'i's submerged lands. These lands, including those known as ceded lands, continue to be held in trust by the State of Hawai'i. The Sanctuary will exist as a co-steward of the Sanctuary and its resources. Should the status of the submerged lands change at some time in the future (i.e., lands are conveyed to a sovereign Hawaiian nation), the Sanctuary will work with the appropriate entities to redefine its role if necessary.

### Sanctuary Resources

#### Humpback Whale

The HINMSA designated the Sanctuary for the primary purpose of protecting endangered humpback whales (*Megaptera novaeangliae*) and their habitat within the Hawaiian Islands marine environment. Recent research indicates that the population of humpback whales in Hawaiian waters during the 1999-2000 season was between approximately 4,500 and 6,500 individuals (Mobley, in press). The same research indicates that the population has increased an average of approximately 7% per year from 1993 through 2000.

The Sanctuary will focus its management efforts to protect humpback whales in their Hawaiian habitat by supporting resource protection, research, long-term monitoring, education, and interpretation programs and by supporting efforts to improve coordination among the management agencies, researchers, educators, and various user groups.

#### Humpback Whale Habitat

The marine waters surrounding the Hawaiian Islands comprise only a portion of the overall habitat of the humpback whale (i.e., Alaskan feeding grounds, migration routes, etc.). But these waters are essential because they provide breeding, calving, nursing, and resting areas for the majority of the endangered North Pacific humpback whale population. Thus, Hawai'i is one of the most important humpback whale breeding grounds in the world. Most humpbacks can be found in the warm, protected nearshore waters less than 100 fathoms (600 feet) deep (NOAA Fisheries 1991, Nitta and Naughton 1989). Cows with calves tend to be distributed in more nearshore waters on the leeward sides of islands, often within the 10-30 fathom isobath (60-180 feet) depth (NOAA Fisheries 1991). The NMSP has defined humpback whale habitat, for purposes of Sanctuary management, as:

"those areas in the waters around Hawai'i that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing."



## Impacts of Alternatives

### Alternative A: Take No Action

#### **Environmental Impacts**

Taking no action would result in *status quo* of the current management regime of the HIIHWNMS. The existing Management Plan/Environmental Impact Statement contains a full analysis of the environmental impacts of each alternative discussed therein.

#### **Socioeconomic Impacts**

Taking no action would result in no additional socioeconomic impacts than those already associated with the operation of the HIIHWNMS. The existing Management Plan/Environmental Impact Statement contains a full analysis of the socioeconomic impacts of each alternative discussed therein.

### Alternative B: Propose the Revised Management Plan (Preferred)

#### **Environmental Impacts**

The revised management plan makes no boundary or regulatory changes; however, existing and new non-regulatory programs would be updated and enhanced. NOAA expects this would have a positive environmental effect, by reaching more people and expanding the stewardship message of the Sanctuary.

#### **Socioeconomic Impacts**

Since the revised management plan makes no boundary or regulatory changes, NOAA and the State of Hawai'i expect it would result in no additional socioeconomic impacts than those already associated with the operation of the HIIHWNMS.

## **Finding of No Significant Impact**

NOAA Administrative Order (NAO) 216-6 (revised May 20, 1999) provides eleven criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below with respect to the proposed action:

1. Impacts may be both beneficial and adverse — a significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The final revised management plan makes no boundary or regulatory changes, but does update and enhance non-regulatory programs. NOAA expects this will result in a non-significant but positive environmental effect, by reaching more people and expanding the stewardship message of the Sanctuary.

2. What is the degree to which public health or safety is affected by the proposed action?

Public health and safety will not be affected by the proposed action.





3. Are there unique characteristics of the geographic area in which the proposed action is to take place?

The Hawaiian Islands are unique in providing such extensive habitat for humpback whales.

4. What is the degree to which effects on the human environment are likely to be highly controversial?

The final revised management plan is considered to be non-controversial. The plan has enjoyed wide public support.

5. What is the degree to which effects are highly uncertain or involve unique or unknown risks?

The final revised management plan is not considered to involve highly uncertain, unique, or unknown risks.

6. What is the degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

The final revised management plan lays the groundwork for how the Sanctuary will be managed for the next five years. Included in the plan are some projects that may consider adding new species and/or extending the boundary of the Sanctuary. Any such actions that may be undertaken would involve public review and the appropriate steps required under the National Marine Sanctuaries Act and the National Environmental Policy Act.

7. Does the proposed action have individually insignificant but cumulatively significant impacts?

The final revised management plan makes no boundary or regulatory changes, but does update and enhance non-regulatory programs. NOAA does not expect this will result in cumulatively significant impacts.

8. What is the degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources?

The proposed action will not adversely affect any entity listed in or eligible for listing in the National Register of Historic Places. Nor will the proposed action cause the loss of or destroy any significant scientific, cultural, or historic resources.

9. What is the degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected?

NOAA does not believe that the revised final management plan will have any adverse impact on an endangered or threatened species. The original management plan for the HIHWNMS was subject to a consultation under the Endangered Species Act. Since the final revised management plan makes no boundary or regulatory changes, a new consultation was not required. NOAA Fisheries reviewed and provided comments on the revised management plan, which have been incorporated in the final document.



### Appendix 3: Environmental Assessment

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10. Is a violation of Federal, state, or local law for environmental protection threatened?

The final revised management plan does not violate any Federal, state, or local environmental protection law.

11. Will the proposed action result in the introduction or spread of a nonindigenous species?

The proposed action is not expected to result in the introduction or spread of a nonindigenous species.

#### FONSI STATEMENT

In view of the analysis presented in this document, the final revised management plan will not significantly affect the quality of the human environment, with specific reference to the criteria contained in Section 6.01 of NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (NEPA). Accordingly, the preparation of an Environmental Impact Statement for the proposed action is not necessary.

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Margaret A. Davidson  
Acting Assistant Administrator for Ocean Services  
and Coastal Zone Management

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Date





## Appendix 4: Response to Comments

Issues identified during the public comment phase of the management plan review have been incorporated into their related Action Plans to produce this section of the plan. Issues raised during the public comment period are identified by Action Plans in this section to give the reader a better understanding of where these issues are addressed with their associated strategies and activities in the final revised management plan. Island specific comments and general comments received on the revised management plan are separated and follow the comments relating to the five Action Plans.

### Resource Protection Programs

1. Comment: Expand Sanctuary boundary to include all main and Northwestern Hawaiian Islands and/or include all habitat and migration routes.

Response: Comments received during the public review period indicated a strong desire to expand Sanctuary boundaries. The NMSP manages resources on a site by site basis taking into account each area's size and resources, existing management authorities, accessibility to the site, types and impacts of human uses, suitability for research, and monitoring and enforcement activities. The boundaries for this Sanctuary were chosen after a long and complex decision-making process that took into account all of the factors described above, as well as the desires of the State of Hawai'i. As the Sanctuary evaluates current research and acquires new information on humpback whale habitat requirements, future boundary modification may become necessary to enhance resource protection. A SAC working group may be established to determine new boundary protection requirements based upon these scientific research findings. In addition, boundary modifications may result for the inclusion of new resources (see comment 2). Any future boundary changes will be made through the same public scoping process that designated the Sanctuary.

2. Comment: The Sanctuary needs to protect all ocean species. The process to consider adding new species to the Sanctuary needs to be both better explained and accelerated.

Response: In response to overwhelming public comment, NOAA has accelerated the process to identify and evaluate new species for possible inclusion in the Sanctuary. This goal and the strategy by which new resources will be identified for inclusion is addressed in Strategy NRP-5 of the Natural Resource Protection Action Plan. In addition, a flow chart better explaining the process has been included within this final revised management plan (Figure 3). The NMSP will work closely with the State of Hawai'i, the SAC, agency partners, and the public throughout the lengthy public scoping process and development of a Supplemental Environmental Impact Statement (EIS) to include additional resources within the Sanctuary. The Governor of Hawai'i will have the authority to decide whether those resources and associated management measures (e.g. regulations, boundary modification) would be included in State waters of the Sanctuary.

3. Comment: Commenters indicated concern about the impact of acoustics, such as LFA sonar and NPAL on humpback whales and their habitat.

Response: Research indicates that cetaceans can be negatively impacted by certain underwater sounds, although these impacts are not well understood in the case of large baleen whales such as humpbacks. The potential adverse effects of acoustics or human-generated underwater sounds will continue to be examined and minimized by the Sanctuary through scientific research and permit review activities. Strategy NRP-3, Activity A of this plan will study and document human activities (including those that generate underwater sounds) and examine the possible negative impacts of



## Appendix 4: Response to Comments

these activities. Strategy NRP-3, Activities B and C will subsequently work to minimize these negative impacts as they are identified and better understood. In a complementary fashion, the activities of Strategy RM-2 of this plan will monitor and assess potential threats to humpback whales, including potential threats from underwater sounds.

As these potential impacts are identified and quantified, Strategy AD-2 of this plan will be used to coordinate and communicate with various agencies, including NOAA Fisheries and the State of Hawai'i, so that potential adverse impacts to humpback whales from underwater sounds (as well as impacts from other potential threats) are eliminated or minimized. This may be accomplished through existing Federal and State regulatory processes, such as permitting requirements associated with the Endangered Species Act, the Marine Mammal Protection Act, and the Hawai'i Coastal Zone Management Program. If these existing regulatory authorities combined with non-regulatory education and outreach activities prove insufficient to adequately protect humpback whales and their habitat, additional regulations may be considered by the Sanctuary under the authority of the National Marine Sanctuaries Act.

4. Comment: Commenters indicated concern about the impact of military activities on humpback whales and their habitat.

Response: NOAA formally consulted with DOD on their existing military activities during the designation of the Sanctuary and concluded that DOD had sufficient resource protection measures within their standard operating procedures to ensure the protection of humpback whales and their habitat. DOD activities proposed within the Sanctuary after designation have been subject to joint consultation reviews by NOAA Fisheries under provisions of the Marine Mammal Protection Act and the Endangered Species Act (ESA) and the NMSP under provisions of the National Marine Sanctuaries Act (NMSA). To avoid duplicative consultation requirements, NOAA Fisheries issues one NOAA response that fulfills both the ESA Section 7 and the NMSA Section 304(d) consultation requirements. The purpose of these reviews is to allow NOAA to review and comment on environmental impact statements, proposed permits, or other authorizations for Federal projects and Federally permitted activities that may affect humpback whales.

5. Comment: Commenters indicated concern about the impact of water quality on humpback whales and their habitat including land-based pollution such as runoff and ocean dumping.

Response: Very little scientific information exists at present regarding the impact of degraded water quality or water pollution on humpback whales. Strategy NRP-3, Activity A of this plan will study and document human activities (including those that generate water pollution) and examine the possible negative impacts of these activities. Strategy NRP-3, Activities B and C will subsequently work to minimize these negative impacts as they are identified and better understood. In a complementary fashion, the activities of Strategy RM-2 of this plan will monitor and assess potential threats to humpback whales, including potential threats from water pollution. As these potential impacts are identified and quantified, Strategy AD-2 of this plan will be used to coordinate and communicate with various agencies, including the Environmental Protection Agency, NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Hawai'i, Department of Health, to address potential adverse impacts on humpback whales and their habitat from water pollution (as well as impacts from other potential threats) until they are eliminated or minimized. This may be accomplished through existing Federal and State regulatory processes, such as permitting requirements associated with the Clean Water Act, the Endangered Species Act, the Marine Mammal Protection Act, the Hawaii Coastal Zone Management Program. If these existing regulatory authorities combined with non-regulatory education and outreach activities prove insufficient to adequately protect humpback





whales and their habitat, additional regulations may be considered by the Sanctuary under the authority of the National Marine Sanctuaries Act.

6. Comment: A number of commenters suggested reviewing and strengthening whalewatching regulations and guidelines, including speed limits, procedures for moving away from whales, posting the approach regulations on boats, and limiting the numbers of whalewatching boats.

Response: Whalewatching represents one of the most important uses of the Sanctuary waters in Hawai'i. Within the Sanctuary, all, vessels, including whalewatch boats are required to abide by 100-yard minimum approach regulations for humpback whales.

The Sanctuary is proposing to study and document human activity (including whalewatching) to examine the possible negative impacts of these activities via Strategy NRP-3, Activity A of this revised management plan. Strategy NRP-3, Activities B and C will subsequently work to minimize any negative impacts as they are identified and described. Similarly, the activities of Strategy RM-2 of this plan will monitor and assess potential threats to humpback whales, including potential threats from commercial whalewatching.

As these potential impacts are identified and quantified, Strategy AD-2 of this plan will be used to coordinate and communicate with various agencies, including NOAA Fisheries and the State of Hawai'i, so that any potential adverse impacts to humpback whales from commercial whalewatching (as well as impacts from other potential threats) are eliminated or minimized through existing Federal and State regulatory processes, such as permitting requirements associated with the Endangered Species Act, the Marine Mammal Protection Act, the Hawaii Coastal Zone Management Program. If these existing regulatory authorities combined with non-regulatory education and outreach activities prove insufficient to adequately protect humpback whales and their habitat, additional regulations may be considered by the Sanctuary under the authority of the National Marine Sanctuaries Act.

7. Comment: Commenters concerned about the impact that the operation of thrillcrafts in Sanctuary waters has on humpback whales.

Response: The NMSP has developed various strategies throughout this revised plan that will monitor the potential impacts that human activities, such as the operation of thrillcrafts, have on the recovery of humpback whales in Sanctuary waters. In particular, NRP-2 Activity A will monitor types of human activity to better assess current threats to humpback whales within Sanctuary waters. In addition, NRP-4 relating to enforcement of regulations, promotes public stewardship and voluntary compliance of regulations while assuring that current regulations, such as the one that regulates operation of thrill crafts in State waters during whale season (HAR Section 13-256-16), is effective in the long-term recovery of humpback whales within Sanctuary waters.

8. Comment: Commenters indicated concern about the impacts of other activities affecting humpback whales and their habitat, including aquaculture, fishing impacts, and removal of black coral.

Response: Through the implementation of various portions of this plan, including NRP-2, NRP-3, RM-2 and AD-2, the Sanctuary will remain watchful and take action when necessary to ensure that human activities within its boundaries do not significantly hinder the recovery from endangered species status of the North Pacific population of humpback whales. Responses to comments 8, 10



## Appendix 4: Response to Comments

and 11 above offer more detailed discussion of the complementary approaches presented in this revised management plan.

9. Comment: Suggestions were made that a general threat assessment be conducted before the end of 2002 and appropriate management measures, including zoning, be determined.

Response: The Sanctuary acknowledges the importance of the threat assessment study conducted under NRP- 3 and RM-2 and will work to identify current threats through research studies and workshops as soon as possible. Development of the workshop will be done to include examination of and representation from the wide variety of human uses and activities occurring within Sanctuary boundaries.

10. Comment: The Sanctuary needs to better identify staff and other resources and abilities to respond to emergencies.

Response: The Sanctuary has placed an emphasis on better contingency planning and emergency response capabilities. This focus is represented by the first strategy discussed in the Natural Resource Protection Action Plan and in the Administration Action Plan, specifically AD-4, of this revised management plan.

11. Comment: The Sanctuary needs to explain its enforcement program, including personnel, coordination among agency partners, and penalty schedules.

Response: The Sanctuary's enforcement program and related activities to be accomplished over the next 5-years are described in the revised management plan, under Strategy NRP-4 contained in the Natural Resource Protection Action Plan. While the NMSP is not authorized to directly conduct enforcement activities, NMSP will continue to work with federal and state enforcement agencies, e.g., NOAA Fisheries Office of Law Enforcement (OLE) and DLNR-DOCARE to facilitate enforcement of Sanctuary regulations and other laws related to humpback whale conservation. The Sanctuary will also work closely with these and other agencies to develop strategies to reduce violations and protect humpback whales throughout Sanctuary waters. Penalty schedules change annually and can be obtained by contacting NOAA Fisheries OLE and DLNR-DOCARE.

12. Comment: The Sanctuary should explain what the public can do if someone sees a violation.

Response: The Sanctuary's Ocean Users' Handbook, produced on an annual basis for use at the Ocean Users' Workshop, contains all the information necessary for a member of the public to help the Sanctuary or its partners respond to a violation. Copies of this handbook are available on the Sanctuary's website or may be obtained at any of the Sanctuary's offices. In addition, the Sanctuary will continue to explore other opportunities to ensure that the general public receives the necessary information to report violations as described in NRP-4 of the Natural Resource Protection Action Plan and EO-1 Activities B & D of the Education and Outreach Action Plan.

13. Comment: The Sanctuary should explain its authority for its regulations.

Response: The Sanctuary derives its authority to regulate activities (as necessary to protect its resources) from the National Marine Sanctuaries Act, as amended. Sanctuary regulations incorporate NOAA Fisheries humpback whale approach regulations for Hawai'i and regulations prohibiting taking or possessing a humpback whale or parts thereof, as well as regulations regarding water pollution and seabed alteration within the Sanctuary. In addition, the State of Hawai'i has additional regulations that protect humpback whales in State waters. NRP-4 of this revised management plan







aims to enforce current regulations and reduce violations through education and outreach activities as well as assess the long-term effectiveness of current regulations. Please refer to Appendix 2 for the complete list of Sanctuary regulations.

14. Comment: The Sanctuary should assume responsibility for the area's stranding network by ensuring partnerships for a pool of qualified responders; and creating a rescue/rehabilitation program for whales and other species.

Response: Assisting in effective humpback whale stranding response is considered by the NMSP as an important element of the Sanctuary's overall management approach. Stranded whales can provide rare opportunities for scientific study, and the whales deserve veterinary treatment and release if possible, or relief from suffering when experts determine that there is no chance of recovery. NOAA Fisheries is the Federal agency authorized to take the lead in developing and maintaining marine mammal stranding networks. Strategy AD-2, Activity A outlines the mechanism by which the Sanctuary will improve its participation in humpback whale stranding response in close coordination with NOAA Fisheries and the State of Hawai'i.

15. Comment: The Sanctuary should increase its effort to collaborate on protection and management activities throughout the U.S. and international range of humpback whales.

Response: The Sanctuary must focus its efforts and resources on the best protection it can provide to humpback whales within Sanctuary waters; however, where possible, the Sanctuary will collaborate with others on research, education, and other efforts designed to better protect humpback whales throughout their range in both U.S. and International waters.

### **Education and Outreach Action Plan**

16. Comment: NOAA received many suggestions on specific partners with whom it should be working on education projects, including whalewatch operators, tour guides, equipment rental vendors, visitors, yacht and sailing clubs, fishers, divers, local schools, Hanauma Bay, and the University of Hawai'i Department of Oceanography. NOAA also received many suggestions on specific projects or opportunities it should consider, including increasing signage at specific locations, having lectures at Ocean Count events, creating certificates for various events, and creating whale adoption programs.

Response: The Sanctuary has and will continue to work with many partners in order to reach as many segments of the community as possible to enhance existing programs and develop new outreach methods and products. The Sanctuary has developed an Education and Outreach Action Plan that details how the Sanctuary will work on education and outreach efforts over the next five years.

17. Comment: Expand Maui education programs to other islands.

Response: The Sanctuary education program is one of the primary mechanisms used to protect humpback whales and their habitat. The Sanctuary has outlined various strategies and activities in the Education and Outreach Action Plan to increase educational programs to O'ahu, Kaua'i, the Big Island, Moloka'i and Lāna'i.

18. Comment: Sanctuary education projects should meet DOE standards.







Response: NOAA agrees. The Sanctuary has done so in the past, through Educator's Workshops and will continue to work closely with the Department of Education to develop additional educational products that comply with DOE standards. Activities associated with this objective are indicated in Strategy EO-1 and EO-2 of the Education and Outreach Action Plan.

19. Comment: The Sanctuary should develop a naturalist training program.

Response: The Sanctuary lists a naturalist certification program as a program in Activity A of the Education and Outreach Action Plan, Strategy EO-4. The Sanctuary will work with input from the Sanctuary Advisory Council to develop a program that best meets the needs of naturalists and other professional marine science educators while providing them with the latest scientific information about humpback whales and their habitat.

20. Comment: The Sanctuary should increase volunteer opportunities.

Response: NOAA agrees. Strategy EO-4 is included in the Education and Outreach Action Plan and details how NOAA will pursue this effort.

21. Comment: Expand administrative support to the ocean count.

Response: The Sanctuary provides extensive support during the annual Ocean Count; however, the Sanctuary does have staff and resource limitations that may hinder providing opportunities to all those interested in participating. The Sanctuary is committed to expanding volunteer opportunities as detailed in Strategy EO-4 of the Education and Outreach Action Plan. To address this objective, the Sanctuary will look at ways to expand opportunities during the annual ocean count.

### Research and Monitoring Programs

22. Comment: Enhance the sharing of research information, including research priorities and the research permit system, with researchers and the public, using a variety of mechanisms including an annual researchers meeting.

Response: The Sanctuary is fully committed to enhancing the sharing of research information among researchers, between researchers and managers, and with the general public. Strategy RM-4 in the Research and Monitoring Action Plan explores ways to do such, including a research website, regularly produced research summary reports, research newsletter, support for publication of research findings, and informational workshops and seminars.

23. Comment: There was some concern expressed about what constitutes "Sanctuary research" as opposed to research simply conducted in the Sanctuary, as well as what obligations are placed on a researcher who accepts Sanctuary research funding.

Response: The Sanctuary will continue to provide funds and other means of support for scientific research that promises to provide information useful in protecting humpback whales. Research, which receives such support, may be referred to by Sanctuary staff and in Sanctuary publications as "Sanctuary research." The Sanctuary has generally required that reports and other publications





associated with research sponsored by the Sanctuary be made available for public use. The Sanctuary has also required that researchers give public presentations of their methods and results. Activities described in Strategies RM-3 and RM-4 will further develop the specific ways in which Sanctuary-sponsored research is obligated to address the various information needs and management priorities of the Sanctuary.

24. Comment: The Sanctuary needs to better explain its monitoring program.

Response: The monitoring program discussed in the Research and Monitoring Action Plan includes monitoring of important biological and ecological characteristics of humpback whales and their habitat, as well as monitoring of human uses and activities that might have impacts on humpback whales. An important goal of the monitoring program is to gather extensive and long-term data that allow for scientifically valid conclusions concerning trends in whale population and other important biological and ecological parameters. Strategy RM-1 of the Research and Monitoring Action Plan seeks to improve baseline information on humpback whales in the main Hawaiian Islands and will seek to develop research priorities for long-term monitoring studies, such as through mark-recapture techniques. In addition, threat assessment studies and workshops will be conducted as described in RM-2 and NRP-3. By continuing to characterize and monitor the habitat and behavior of humpback whales in Hawai'i, the Sanctuary will continue to educate resource managers, and the public on the findings and significance of its monitoring program as detailed in Strategies RM-4 and RM-5.

25. Comment: The Sanctuary needs to actively assess the research that it promotes.

Response: The Sanctuary recognizes the importance of evaluating the effectiveness and utility of the research it supports. Improving the administration of research projects is the goal of Strategy RM-3 of this revised management plan. Activity A of RM-3 will develop administrative procedures by which research is assessed before, during and after the research is conducted.

### **Cultural Resource Enhancement**

26. Comment: There were a variety of comments on cultural issues, including: identify and use Hawaiian names for all species in the revised management plan; increase involvement with Native Hawaiians; continue to incorporate Native Hawaiian cultural knowledge in Sanctuary programs; and ensure that cultural knowledge is incorporated in stranding network protocols.

Response: The Sanctuary has been and remains committed to working with Native Hawaiians to ensure that cultural values and knowledge are incorporated as much as possible in Sanctuary programs. Numerous steps taken in the past which included adding a Hawaiian Cultural Educator to the Sanctuary's staff and development of educational products emphasizing the importance of cultural values. In continuation of this commitment, the Sanctuary has prepared a Cultural Resource Enhancement Action Plan that includes several strategies to further promote understanding and appreciation of the Hawaiian culture. In addition, the Sanctuary believes the development of a cultural protocol to respond to whale strandings and disposing of whale remains is important for incorporating Native Hawaiian traditions into Sanctuary programs and has therefore been included as an activity in CRE-2 Activity A of the Cultural Resource Enhancement Action Plan.

### **Administration**

27. Comment: Increase staffing for the Sanctuary, including hiring a volunteer coordinator, education coordinator, and research coordinator.





Response: The National Marine Sanctuary Program (NMSP) receives annual appropriations from Congress and works with each Sanctuary to determine the annual budget for that site. Each Sanctuary receives a certain base budget, although some increases may be available. New staff hires are an objective and are addressed in Strategy AD-4 of the Administration Action Plan. A position for a Research Coordinator has been approved and a vacancy announcement has already been made. The addition of other staff, including volunteer and education coordinator positions, is contingent on funding and position approvals, and is addressed in AD-4: Enhance the staffing and personnel resources of the Sanctuary, of the revised management plan.

28. Comment: The Sanctuary should coordinate and enhance partnerships among managers, users, researchers, educators, and the general public to better protect humpback whales and their habitat.

Response: The NMSP realizes the importance of developing agency and community partnerships to assist in carrying out the goals and objectives of the Sanctuary, and has actively done so since the designation process began. The Sanctuary Advisory Council is one such vehicle, but the Sanctuary has also developed important partnerships with numerous other government and non-government organizations. Strategies AD-1 and AD-2 of this revised management plan and their associated activities are intended to continue and enhance the Sanctuary's partnerships and highlight the importance the Sanctuary places on partnership-based marine conservation.

29. Comment: Research and education should be top funding priorities.

Response: The primary purpose of the Sanctuary is the protection of the humpback whale and its habitat. Research and education are two of the Sanctuary's primary tools in its protection efforts. How the Sanctuary will enhance research and education opportunities is addressed in the Research and Monitoring Action Plan and the Education and Outreach Action Plan. The Sanctuary has and will continue to fund research and education projects, along with other types of efforts to ensure the best use of staff, funds, and other resources to meet the Sanctuary's vision.

30. Comment: Implement/increase user fees and permits.

Response: NOAA did not propose user fees in the original management plan and similarly did not propose any user fees during this five-year management plan review. The Sanctuary has not needed to issue special use permits, and will continue to work within the permit framework that had already been established by NOAA's Fisheries and the State of Hawai'i. If in the future, NOAA sees the need to develop its own permit system, it will work with its partners and constituents to do so.

31. Comment: Add seat on the Sanctuary Advisory Council for the U.S. Navy.

Response: The Sanctuary Advisory Council is composed of both representatives of the Sanctuary's primary constituents in the community and its agency partners. Although the U.S. Navy uses much of the waters in and around the Sanctuary, it has not to date been represented on the Council. As part of AD-3 of the Administration Action Plan to gather expert advice on the protection and management of humpback whales and their habitat, the Sanctuary will pursue adding a seat to the Council and invite the U.S. Navy to send a representative.





## General Comments

32. Comment: Add description of military activities to Human Use section.

Response: In revising the management plan, NOAA has condensed this section of the plan to become more reader-friendly. An overview of activities that occur within Sanctuary waters is contained within the Human Uses section, including a new sentence that refers to military uses. For a more detailed description of all activities that occur within Sanctuary waters, please refer to the original management plan.

33. Comment: The revised management plan should include an update of what has been accomplished during the last five years.

Response: The revised management plan contains a summary of the State of the Sanctuary report which details many products and activities that the Sanctuary has developed over the past five years to protect humpback whales and their habitat throughout Hawaiian waters. The report assesses the Sanctuary's performance in six important areas, Education and Outreach; incorporation of Native Hawaiian culture; enforcement efforts; interagency cooperation; social impacts; and research activities which are essential components in meeting the Sanctuary's primary objective of resource protection. The revised management plan will continue to enhance existing activities in these areas while incorporating new programs to carry out the goals of the Sanctuary.

34. Comment: All comments collected during the public review period, including those from SAC members, should be available for public review.

Response: All public comments are available on our website. In addition, original comments are available for public review by contacting our office.

35. Comment: Explain status of objections to the original designation of the Sanctuary.

Response: NOAA received many comments during the scoping process for the designation of the Sanctuary and review of the original management plan. All of those comments were synthesized into over 100 basic comments that were responded to in Appendix A of the original management plan. Those responses still represent NOAA's position. Refer to the original management plan for a list of comments received during Sanctuary designation.

36. Comment: Explain the roles of the Federal and State governments in the management of the Sanctuary.

Response: The Federal and State governments (through NOAA and DLNR respectively) are co-managers of the Sanctuary. The terms of the co-management arrangement are contained in the formal Compact Agreement and Memorandum of Understanding contained in Appendix 1 of the revised management plan. On a day-to-day basis, the Federal Sanctuary Manager and State Sanctuary Co-Manager work cooperatively and collaboratively in making decisions related to implementation of the management plan and other Sanctuary-related activities. The Federal and State Sanctuary staff work productively together as teams under the guidance of the Manager and Co-Manager, respectively.

## County Specific Comments



## Appendix 4: Response to Comments

### 37. Honolulu County Comments:

a. Comment: Do not delay or defer Kahuku flood project.

Response: NOAA does not believe the Sanctuary's revised management plan will delay or defer the Kahuku flood project.

b. Comment: Expand boundaries to include Ka'ena Point.

Response: See response to general boundary comment # 1.

### 38. Kaua'i County Comments:

a. Comment: Review Kaua'i Sanctuary boundaries and extend to Līhu'e.

Response: See response to general boundary comment # 1.

b. Comment: Explain or remove Hanama'ulu Harbor on page 20 of the draft revised management plan.

Response: To avoid confusion, NOAA has removed the list of harbors contained in the revised management plan. All commercial ports and small boat harbors in the State of Hawai'i are excluded from the Sanctuary boundaries.

### 39. Hawai'i County Comments:

a. Comment: Hire staff, establish an office, and have more activities on the Big Island.

Response: A significant portion of the Sanctuary is located off the Kona and Kohala coasts of the Big Island. NMSP has recognized the need for an increased presence of the Sanctuary program on the Big Island and has made preliminary surveys of various office sites in the Kailua-Kona area. Strategy AD-5, Activity A of this plan identifies an office on the Big Island to be considered in the development of a 10-year facility plan for the Sanctuary. Staffing needs that would be associated with opening a Big Island office are addressed in Strategy AD-4.

b. Comment: Develop a partnership with the National Park Service (NPS) to protect the Punalu'u community.

Response: Sanctuary staff have noted that there appears to be a significant public concern regarding potential conflicts between beachgoers and green sea turtles (nā honu) in the Punalu'u area on the Big Island. Sanctuary staff also notes the great potential for productive collaboration with the National Park Service and Volcanoes National Park. However, with the present emphasis of the Sanctuary on humpback whale protection and Punalu'u's distance from the Sanctuary boundary, it may be difficult to justify committing Sanctuary resources toward activities in the Punalu'u community at this time. This situation might change, however, if new resources such as green sea turtles (nā honu) are added to the scope of the Sanctuary's protection mandate as a result of Strategy NRP-5.







#### 40. Maui County Comments:

a. Comments: The Sanctuary should form partnerships with the National Park Service to protect Kaho'olawe.

Response: The Sanctuary does not currently have jurisdiction in the waters around Kaho'olawe Island. However, The Sanctuary works closely with the Kaho'olawe Island Reserve Commission (KIRC) in carrying out Educational and Outreach Activities throughout Maui County. Under the HIHWNMS Act of 1992, the waters around Kaho'olawe may be added to the Sanctuary upon receipt of a written request from KIRC and subsequent actions by NMSP to determine the suitability of these waters for inclusion. If in the future the Sanctuary gains authority to manage the waters surrounding Kaho'olawe Island through this process, NMSP expects that it would further develop partnerships with various agencies and organization to protect humpback whales and their habitat within the region.

b. Comment: Do not put more regulations on operation of commercial boats in the Molokini area.

Response: The Sanctuary realizes the economic importance of commercial vessel operations within Sanctuary waters and does not propose any new regulations on commercial vessel activities in the revised management plan. If at a later time, commercial activities within this area are shown to hinder the recovery of humpback whales, NOAA will work with partner agencies, the State of Hawai'i, and the community to develop additional regulations in a way similar to the process used to designate the Sanctuary.

c. Comment: Expand boundary to include entire island, including Kalaupapa area on Moloka'i.

Response: See response to general boundary comment # 1.

d. Comment: Develop partnership with the National Park Service to protect the Kalaupapa area on Moloka'i.

Response: Although the Kalaupapa area is outside the boundaries of the Sanctuary, the Sanctuary will consider developing a partnership with the National Park Service on Moloka'i to conduct appropriate projects such as the annual Ocean Count.



## Appendix 5: Bibliography



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## Appendix 6: Hawaiian Glossary

*āholehole* - jacks  
*ahupua'a* - ancient Hawaiian land division from the mountain to the sea  
*aloha o ke kai* - love for the sea  
*'ālo'ilo'i* - damselfish  
*'aumākua* - deified Hawaiian ancestors who would take on an animal form  
*hīnālea* - wrasses  
*honu* - green sea turtles  
*i'a* - fish  
*'īlioiloikauaua* - Hawaiian monk seals  
*iwikuamo'o'ole* - marine invertebrates  
*kai* - marine, sea  
*kala* - surgeonfish  
*kapu* - temporary or permanent prohibition of certain activities  
*ko'a* - cauliflower coral  
*koholā* - humpback whales  
*kūpuna* - elders  
*limu* - algae and seaweed  
*Lō'ihī* - volcano  
*manō* - sharks  
*mū* - emperors  
*nā* - the, plural definite article  
*'ōpae* - shrimp  
*pāpa'i* - crabs  
*pōhaku puna* - finger/lobe coral  
*uhu* - parrotfish  
*uku* - snappers  
*ula* - lobster  
*'ū'ū* - soldierfish  
*wana* - sea urchins  
*weke* - goatfish



## Appendix 7: Acronyms



ACP - Area Contingency Plan  
AD - Administration (Action Plan)  
CRE - Cultural Resource Enhancement (Action Plan)  
CFR - Code of Federal Regulations  
DLNR - Hawai'i State Department of Land and Natural Resources  
DOC - U.S. Department of Commerce  
DOH - Hawai'i State Department of Health  
DOI - U.S. Department of the Interior  
DOT - U.S. Department of Transportation  
EA - Environmental Assessment  
EIS - Environmental Impact Statement  
EO - Education and Outreach (Action Plan)  
EPA - Environmental Protection Agency  
EPCRA - Emergency Planning and Community Right-to-Know Act  
ESA - Endangered Species Act  
FR - Federal Register  
HAR - Hawai'i Administrative Rules  
HIHWNMS - Hawaiian Islands Humpback Whale National Marine Sanctuary  
HINMSA - Hawaiian Islands National Marine Sanctuary Act  
HSERC - Hawai'i State Emergency Response Commission  
LAC - Local Area Committee  
MMPA - Marine Mammal Protection Act  
MOU - Memorandum of Understanding  
NCP - National Contingency Plan  
NEPA - National Environmental Policy Act  
NGO - Non-governmental organization  
NMSA - National Marine Sanctuaries Act  
NMSP - National Marine Sanctuary Program  
NOAA - National Oceanic and Atmospheric Administration  
NOS - National Ocean Service  
NPS - National Park Service  
NRP - Natural Resource Protection (Action Plan)  
NRT - National Response Team  
OLE - Office for Law Enforcement, NOAA Fisheries  
OPA - Oil Pollution Act  
ORMA - Ocean Recreation Management Area, State of Hawai'i  
ORRT - Oceania Regional Response Team  
RCP - Regional Contingency Plan  
RM - Research and Monitoring (Action Plan)  
RRT - Regional Response Team  
SAC - Sanctuary Advisory Council  
USCG - U.S. Coast Guard  
USFWS - U.S. Fish and Wildlife Service







